REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TOTAL (PHILIPPINES) CORPORATION,
Respondent.

CTA EB No. 1367
(CTA Case No. 8608)

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

Promulgated:

MAY 25 2017 4:02 p.m.

x- x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) seeking the nullification of the Decision[2] dated July 13, 2015 and the Resolution[3] dated September 28, 2015 of this Court's Second Division in CTA Case No. 8608, entitled "Total (Philippines) Corporation vs. Commissioner of Internal Revenue". The assailed Decision granted the Petition, reversed and set aside the CIR's Final Decision on Disputed Assessment (FDDA) dated January 8, 2013, and cancelled and withdrew the Formal Letter of Demand (FLD) and Assessment Notices issued by the CIR against herein respondent, while the assailed Resolution denied the CIR's Motion for Reconsideration (with Motion to Reopen Case).

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[1] *Rollo*, pp. 9-26.
[2] *Id.*, pp. 27-39.
[3] *Id.*, pp. 40-49.

THE PARTIES

Petitioner Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including among others, the power to assess and collect internal revenue taxes, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes of this Honorable Court.

Respondent Total (Philippines) Corporation is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office address at the Penthouse, Philplans, Corporate Center 1012 Triangle Drive, North Bonifacio Global City, Taguig City.[4]

THE COURT'S JURISDICTION

On October 1, 2015, the CIR received a copy of the Second Division's Resolution dated September 28, 2015. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[5] petitioner had fifteen (15) days from receipt of the said Resolution, or until October 16, 2015, within which to appeal to the Court *En Banc* by way of a petition for review.

On October 15, 2015, petitioner filed a "Motion for Extension of Time to File Petitioner for Review" asking for fifteen (15) days from October 16, 2015 or until November 2, 2015 within which to file the petition, which the Court granted.

As the Petition for Review was posted via registered mail on November 2, 2015 which the Court received on November 12, 2015, the Petition was timely filed.

THE FACTS[6]

Total (Philippines) Corporation, respondent in this Petition who shall be referred to as "Total" hereafter, filed its Quarterly VAT Returns[7] for taxable year 2006 on the following dates:

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[4] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 859.
[5] Dated November 22, 2005, and which took effect starting December 15, 2005.
[6] *Id.* at Note 1, pp. 27-32, as found by the 2nd Division.
[7] BIR Form No. 2550-Q.

Quarterly Return	Required Filing Date[8]	Date of Actual Filing
1st Quarter	April 25,2006	April 25, 2006 (original)[9]
		April 26, 2006(amended)[10]
2nd Quarter	July 25, 2006	July 25, 2006[11]
3rd Quarter	October 25, 2006	October 25, 2006 (original)[12]
		October 30, 2006 (amended)[13]
4th Quarter	January 25, 2007	January 24, 2007 (original)[14]
		January 30, 2007(amended)[15]

By virtue of Letter of Authority (LOA) No. 00011743, issued by the BIR Large Taxpayer Service - Excise Audit Division I dated August 31, 2007, the CIR conducted a tax investigation on petitioner for taxable year 2006.[16]

On different dates, several Waivers of the Defense of Prescription under the Statute of Limitations ("Waivers" for brevity) were executed by Total, with the following details:[17]

WAIVER	DATE OF EXECUTION	EXPIRY DATE	SIGNING OFFICER	DATE SIGNED BY BIR	DATE RECEIVED BY THE TAXPAYER
1st	May 26, 2009	Dec. 31, 2009	OIC-ACIR-LTS[18]	No date	June 17, 2009
2nd	Dec. 14, 2009	June 30, 2010	OIC-ACIR-LTS	No date	Dec. 29, 2009
3rd	Dec. 20, 2010	June 30, 2011	OIC-ACIR-LTS	No date	Dec. 28, 2010
4th	May 23, 2011	Dec. 31, 2011	OIC-ACIR-LTS	June 13, 2011	June 28, 2011
5th	Dec. 7, 2011	June 30, 2012	OIC-ACIR-LTS	Dec. 13, 2011	No receipt
6th	May 14, 2012	Sept. 30, 2012	OIC-ACIR-LTS	June 6, 2012	June 18, 2012

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[8] SEC. 114. Return and Payment of Value-added Tax.-

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT -registered persons shall pay the value-added tax on a monthly basis.

[9] Exhibit "SSS", docket, pp. 1631 to 1632.
[10] Exhibit "TTT", *id.*, pp. 1633 to 1634.
[11] Exhibit "UUU", *id.*, pp. 1635 to 1636.
[12] Exhibit "VVV", *id.*, pp. 1637 to 1638.
[13] Exhibit "WWW", *id.*, pp. 1639 to 1640.
[14] Exhibit "XXX", *id.*, pp. 1641 to 1642.
[15] Exhibit "YYY", *id.*, pp. 1643 to 1644.
[16] Par. 3, Summary of Admitted Facts, JSFI, *id.*, p. 860.
[17] Par. 4, Summary of Admitted Facts, JSFI, *id.*, p. 860.
[18] Officer-in-Charge Assistant Commissioner of the Large Taxpayers Service.

An informal conference was held on January 13, 2012, following the receipt by Total of a Notice for Informal Conference dated December 2, 2011.[19]

On July 25, 2012, Total received the Preliminary Assessment Notice (PAN) issued by the CIR, alleging that the former is liable for deficiency taxes amounting to ₱33,328,388.20, inclusive of statutory increments.[20] Included in the deficiency tax assessment is the alleged interest income from affiliates not subjected to VAT, in the amount of ₱44,296,477.00.[21]

On August 10, 2013, which was fifteen (15) days from the receipt of the said PAN, Total filed a reply to the PAN disputing the findings of the CIR.[22]

Total subsequently received the FLD and FAN, both dated September 19, 2012, alleging that Total was liable for deficiency taxes.[23]

Total filed its formal letter of protest on October 16, 2012 on the deficiency VAT assessment arising from interest-earning loans extended by Total to its affiliates, Filipinas Third Millennium Realty Corporation, Peninsula Land Bay Realty Corporation, and La Defense Filipinas Holdings Corporation, amounting to ₱39,223,837.16.[24]

On January 9, 2013, Total received the FDDA dated January 8, 2013. Based on the FDDA, Total was still liable for VAT deficiency in the amount of ₱10,380,093.06, inclusive of interest and compromise penalties, broken down as follows:[25]

Tax	Basic Tax Due	Interest	Compromise Penalty	Total
VAT	₱4,706,860.46	₱5,648,232.60	₱25,000.00	₱10,380,093.06

On February 7, 2013, Total filed its Petition for Review[26] with the Court, pursuant to Section 228 of the NIRC of 1997, which provides that if the protest is denied in whole or in part, the taxpayer has thirty (30) days from the receipt of the decision denying said protest to appeal to the Court of Tax Appeals (CTA).

[19] Par. 5, Summary of Admitted Facts, JSFI, docket, p. 860.
[20] Par. 6, Summary of Admitted Facts, JSFI, *id.*, p. 860.
[21] Exhibit "J", *id.*, pp. 1029 to 1040.
[22] Par. 7, Summary of Admitted Facts, JSFI, *id.*, p. 861.
[23] Par. 8, Summary of Admitted Facts, JSFI, *id.*, p. 861.
[24] Par. 9, Summary of Admitted Facts, JSFI, *id.*, p. 861.
[25] Par. 10, Summary of Admitted Facts, JSFI, *id.*, p. 861.
[26] *Id.*, pp. 6 to 36.

Total claimed that the Waivers executed by it are defective and therefore not valid and binding. It contended that according to Revenue Memorandum Order (RMO) No. 20-90, waivers involving an assessment amounting to more than ₱1,000,000.00 should be signed by the BIR Commissioner. Since the subject Waivers were signed by OIC-ACIR-LTS Zenaida G. Garcia and OIC-ACIR-LTS Alfredo V. Misajon, they were defective and did not produce any binding effect. Moreover, Total argued that contrary to what RMO No. 20-90 requires, the dates of acceptance by the officials of respondent were not indicated in the First and Second Waivers. Also, the Waivers did not specify the kind and amount of tax due, and were not notarized.[27]

Total posited that a defective waiver does not extend the prescriptive period, and thus the period to assess Total had already prescribed when the final assessment was issued. It cited Section 203 of the NIRC of 1997, which provides for a three-year prescriptive period.[28]

Total also contended that even assuming that the waivers were valid, it could not be assessed for deficiency VAT, considering that the alleged interest income was not earned by petitioner in the ordinary course of its trade or business. Total added that it was not a lending investor and that there was no specific law providing that interest income earned by non-lending investors were subject to VAT.[29]

It further claimed that Section 108 of the NIRC of 1997 and Revenue Regulations (RR) No. 16-05 specifically enumerate all the entities engaged in the sale of services subject to VAT. According to Total, an isolated lending activity is not among those enumerated activities. Applying the settled rule in statutory construction that the mention of one thing implies the exclusion of another thing not mentioned, Total maintained that the isolated lending activity was not subject to VAT.[30]

Finally, Total argued that the alleged interest income being subjected to VAT was neither actually nor constructively received. Total claimed that under Section 108 of the NIRC of 1997, as amended, the VAT on sale of services accrues only upon actual or constructive receipt of the consideration for the service rendered.[31]

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[27] Petition for Review, *id.*, pp. 13 to 21.
[28] Petition for Review, *id.*, p. 22.
[29] Petition for Review, *id.*, pp. 22 to 28.
[30] Petition for Review, docket, pp. 28 to 31.
[31] Petition for Review, *id.*, p. 31.

In the CIR's Answer[32] filed on April 30, 2013, the CIR alleged by way of special and affirmative defenses that the guidelines confined in RMO No. 20-90 should not be used to thwart the collection of just taxes. The CIR claimed that a taxpayer may be prevented from setting up the defense of prescription, if by the taxpayer's repeated requests or positive acts, the Government has been, for good reasons, persuaded to postpone the collection of taxes.[33] The CIR added that Revenue Delegation Authority Order (RDAO) No. 5-2001 grants the Assistant Commissioner for Large Taxpayers Service the authority to sign and accept a Waiver of the Defense of Prescription under the Statute of Limitations.[34]

The CIR also argued that the waivers executed by Total led him to believe that a binding agreement was reached leading to the postponement of tax collection.[35] He posited that based on Section 108 of the NIRC of 1997, Total was liable for deficiency VAT for taxable year 2006 on income earned from loans extended to its affiliates since they were extended by Total as a form of service for a fee, remuneration or consideration.[36] Finally, he asserted that in the absence of proof to the contrary, Total was liable for deficiency VAT for taxable year 2006 because the presumption under the law is in favor of the correctness of tax assessments.[37]

Total filed its Pre-Trial Brief[38] on May 30, 2013; while the CIR filed his Pre-Trial Brief[39] through registered mail on July 1, 2013.[40] As directed by the Court, the parties submitted a Joint Stipulation of Facts and Issues[41] on August 5, 2013; which the Court adopted in its Pre-Trial Order[42] on August 15, 2013.

Total presented as a witness Mr. Dennis Odra[43], its Tax Manager. Total likewise formally offered several pieces of documentary evidence on February 18, 2014,[44] which were all admitted by the Court.[45]

On the other hand, the CIR presented Revenue Officer Armie A. Buena[46] as his lone witness. In addition, he presented documentary evidence

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[32] *Id.*, pp. 119 to 129.
[33] Answer, *id.*, pp. 121 to 123.
[34] Answer, *id.*, p. 123.
[35] Answer, *id.*, pp. 123 to 126.
[36] Answer, *id.*, pp. 126 to 127.
[37] Answer, *id.*, pp. 127 to 128.
[38] *Id.*, pp. 132 to 141.
[39] *Id.*, pp. 829 to 834.
[40] Received by the Court on July 12, 2013.
[41] Docket, pp. 859 to 866.
[42] Docket, pp. 868 to 873.
[43] Minutes of Hearing dated August 28, 2013, docket, p. 874; Minutes of Hearing dated February 5, 2014, docket, p. 987.
[44] Formal Offer of Evidence, docket, pp. 988 to 1005.
[45] Resolutions dated March 21, 2014 and May 20, 2014, docket, pp. 1662 to 1663 and 1678 to 1680, respectively.

on June 27, 2014.[47] Total filed its Comment/ Opposition (To Respondent's Motion for Leave to Admit Attached Formal Offer of Evidence filed on June 27, 2014)[48] on July 14, 2014, and its Comment (To Respondent's Formal Offer of Evidence filed on June 27, 2014)[49] on August 18, 2014. The Court admitted Exhibits "1" to "6", "8", and "9" in its Resolution dated September 22, 2014. However, it denied the admission of Exhibit "7" on the ground that it was a general offer, which is prohibited for being too broad and unspecified.[50]

As directed by the Court, the CIR filed his Memorandum[51] on November 24, 2014, while Total filed its Memorandum[52] on November 25, 2014. The case was then submitted for decision on December 1, 2014.[53]

On July 13, 2015, the Court's Second Division promulgated its Decision which granted Total's Petition. The dispositive portion thereof states:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED.** Respondent's Final Decision on Disputed Assessment dated January 8, 2013 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Formal Letter of Demand and Assessment Notices issued by respondent against petitioner for deficiency VAT for taxable year 2006 in the total amount of P10,380,093.06 are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

The CIR filed his Motion for Reconsideration *(with Motion to Reopen Case)* of the Decision through registered mail on July 30, 2015 which the Court received on August 10, 2015. On September 28, 2015, this Court's Second Division promulgated a Resolution which denied petitioner's Motion for Reconsideration.

The CIR filed the present Petition for Review on November 12, 2015 assailing the Second Division's Decision and Resolution on the following grounds:

a) The assessment was issued within the period agreed upon by both petitioner and respondent;

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[46] Minutes of the Hearing dated June 9, 2014, docket, p. 1681.
[47] Motion for Leave to Admit Attached Fonnal Offer of Evidence, docket, pp. 1682 to 1694.
[48] Docket, pp. 1698 to 1702.
[49] Docket, pp. 1706 to 1714.
[50] Docket, pp. 1716 to 1717.
[51] Docket, pp. 1728 to 1739.
[52] Docket, pp. 1740 to 1775.
[53] Resolution, docket, p. 1776.

b) Total is estopped from claiming that the waivers it executed were defective; and

c) Total is liable to pay the deficiency VAT assessment.

On January 29, 2016, Total filed its Comment to the Petition for Review.

On February 17, 2016, this Court issued a Resolution directing both parties to file their simultaneous memoranda.

On June 2, 2016, the Court *En Banc* issued a resolution noting the CIR's failure to file his Memorandum and the submission of Total's Memorandum on April 22, 2016. In that same resolution, the above-captioned case was submitted for decision.

ISSUE

The following issues were raised in the Petition:

a) Whether the prescriptive period to assess Total has already prescribed; and

b) Whether Total is liable for the deficiency VAT assessment for taxable year 2009.

THE ARGUMENTS OF THE PARTIES

The CIR argues that the only requirement by law for the extension of the period to assess is for the Commissioner and the taxpayer to agree in writing and that RMO No. 20-90 is merely an instructional revenue memorandum order for revenue officials regarding waivers.

The CIR further argues that through its silence, Total is estopped from claiming that the waivers are defective and that its partial payment of the assessment puts it on all fours with the doctrine in the *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[54] (RCBC) case.

Finally, the CIR argues that Total is liable to pay the deficiency VAT assessment as the loans it extended to its affiliates[55] are a form of service for a

[54] G.R. No. 170257, September 7, 2011.
[55] Filipinas Third Millennium Realty Corporation (FTMRC), Peninsula Land Bay Realty Corporation (PLBRC) and La Defense Filipinas Holdings Corporation (LDFHC).

fee, remuneration or consideration done in the course of its trade or business. Pursuant to Sections 108 and 105 of the NIRC in relation to RR No. 16-2005, the interest income earned by Total from the loans it extended to its affiliates is subject to VAT.

On the other hand, Total maintains that the prescriptive period within which the CIR could validly assess it has prescribed. The waivers did not conform to RMO No. 20-90 and the defects therein are fatal and did not work to extend the prescriptive period.

Total also argues that the principle of estoppel does not apply in this case and that, furthermore, unlike the *RCBC* case, the partial payments it made did not result in certain benefits for estoppel to apply. More importantly, jurisprudence has established that the validity of waivers can be raised at any time, even on appeal, and that a taxpayer agreeing to the execution of a waiver does not forego the right to invoke prescription.

Finally, Total maintains that it is not liable to pay deficiency VAT from interest income of loans extended to its affiliates as these loans were not done in its regular course of business. Extending loans, and the corresponding interest income resulting therefrom, are not related to its petroleum business and it cannot be held liable for VAT thereon.

THE RULING OF THE COURT

We deny the Petition.

On the outset, the Court *En Banc* notes that in assailing the Decision and the Resolution of the Court in Division, the CIR merely rehashed his arguments which already have been sufficiently and exhaustively passed upon by the Court in Division. To warrant reconsideration, modification, or even a reversal of the assailed Decision and Resolution, it is incumbent upon the petitioner, the CIR, to disclose any new and compelling reasons to disturb the Court's findings. The Petition fails in this respect.

We uphold the finding of the Court in Division that the assessment was issued beyond the prescriptive period because the waivers which sought to extend the prescriptive period were defective and infirm.

Section 203 of 1997 NIRC provides for the prescriptive period for the assessment of internal revenue taxes, thus:

> "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 a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day 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."

The government's right to assess the taxpayer, therefore, prescribes in three (3) years, counted from the date of the last day of filing. However, if the return is filed by the taxpayer after such date, the three-year period is reckoned from the date of actual filing.[56]

At this juncture, *We* find no reason to disturb the factual findings of the Court in Division on the filing dates of Total's Quarterly VAT Returns and the computation of the last day to assess, thus:

> "x x x Section 114(A)[57] of the NIRC of 1997, as amended, and Section 4.114-1(A) of RR No. 16-2005 provides that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter. Summarized below are the dates of filing of petitioner's Quarterly VAT Returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT for the four (4) quarters of calendar year ending December 31, 2006:

Quarterly Return	**Required Filing Date**	**Date of Actual Filing**	**Last Day to Assess**
1st Quarter	April 25, 2006	April 25, 2006 (original)	April 26, 2009
		April 26, 2006 (amended)	
2nd Quarter	July 25, 2006	July 25, 2006	July 25, 2009

[56] Section 203, 1997 National Internal Revenue Code.
[57] SEC. 114. Return and Payment of Value-added Tax.-

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered

persons shall pay the value-added tax on a monthly basis.

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3rd Quarter	October 25, 2006	October 25, 2006 (original)	October 30, 2009
		October 30, 2006 (amended)	
4th Quarter	January 25, 2007	January 24, 2007 (original)	January 30, 2010
		January 30, 2007 (amended)	

From the foregoing, respondent had until April 26, 2009, July 25, 2009, October 30, 2009 and January 30, 2010 within which to assess petitioner for deficiency VAT for the first, second, third and fourth quarter of taxable year 2006, respectively. However, the FLD and the FAN were issued by respondent only on September 19, 2012 and received by petitioner on September 21, 2012[58]. Clearly, the FLD and the FAN were issued beyond the last day prescribed under Section 203 of the NIRC of 1997, as amended, to assess petitioner for deficiency VAT for taxable year 2006. Respondent does not deny that the assessment notices were issued beyond the three-year prescriptive period, but claims that the period was extended by the waivers executed by petitioner."

Indeed, in accordance with the provisions of Section 222(b) and (d) of the 1997 NIRC, these prescriptive periods may be suspended by the execution of a waiver of the statute of limitations. However, these very same sections require that the waiver be executed before the expiration of the three-year period for assessing taxes.

Section 222(b) of the 1997 NIRC, provides:

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -

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."

[58] Exhibits "L" and "M".

In addition to the requirement that a waiver must be executed before the expiration of the three-year period to assess taxes as stated above, RMO No. 20-90 mandates the specific requirements that must be followed in the execution of a valid waiver of the defense of prescription. This, together with its factual findings, were discussed by the Court in Division in the assailed Decision, to wit:

> "RMO No. 20-90 issued on April 4, 1990 and RDAO No. 05-01 issued on August 2, 2001 lay down the procedure for the proper 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.
>
> 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.[59] *(Emphases supplied)*

RMO No. 20-90 must be strictly followed. 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.[60]

After a careful scrutiny of the subject waivers, *We* find the same to be defective and did not validly extend the original three-year prescriptive period because the date of acceptance by OIC-ACIR-LTS Zenaida G. Garcia was not indicated in the First and Second Waivers[61] in violation of RMO No. 20-90.

The date of acceptance is necessary to fix with certainty if the waiver was actually agreed upon before the expiration of the three-year prescriptive period[62].

Likewise, the BIR failed to verify whether a notarized written authority was given to the individuals signing the subject waivers on behalf of petitioner in violation of RDAO No. 05-01 which provides that 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 Court also noted that the Third Waiver[63] was executed on December 20, 2010, which was beyond June 30, 2010, the expiry date indicated on the Second Waiver which is in violation of Section 222(b) of the NIRC of 1997, as amended, which provides that "[t]he period so agreed upon may be extended by

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[59] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[60] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008, citing *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[61] Exhibits "D" and "E".
[62] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[63] Exhibit "F".

subsequent written agreement made **before** the expiration of the period previously agreed upon". As expounded by RMO No. 20-90, both the date of execution by the taxpayer and date of acceptance by the Bureau should be **before** the lapse of the period agreed upon in case a subsequent agreement is executed."

At this juncture, the Court *En Banc* emphasizes that it is imperative that RMO No. 20-90 be followed in order to produce waivers that validly extend the prescriptive period to assess. In *Commissioner of Internal Revenue v. FMF Development Corporation*[64], the CIR raised the argument that "the requirements in RMO No. 20-90 are merely directory," and that "there is no provision in RMO No. 20-90 stating that a waiver may be invalidated upon failure of the BIR to furnish the taxpayer a copy of the waiver". However, the Supreme Court refused to accept the CIR's argument and ruled as follows:

> "Petitioner contends that the procedures in RMO No. 20-90 are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. **RMO No. 20-90 must be strictly followed.** In *Philippine Journalists Inc. v. Commissioner of Internal Revenue*[65], we 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 unequivocally, particularly where the language of the document is equivocal.**[66] Notably, in this case, the waiver became unlimited in time because it did not specify a definite date agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality."[67] *(Emphasis supplied)*

A perusal of the waivers shows that they are riddled with defects. For ease of reference, the Table of the Waivers of the Defense of Prescription as recounted above is reproduced below:

[64] G.R. No. 167765, June 30, 2008.
[65] G.R. No. 162852, December 16, 2004.
[66] *Id.*
[67] *Id.* citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 115712, February 25, 1999.

WAIVER	DATE OF EXECUTION	EXPIRY DATE	SIGNING OFFICER	DATE SIGNED BY BIR	DATE RECEIVED BY THE TAXPAYER
1st	May 26, 2009	Dec. 31, 2009	OIC-ACIR-LTS[68]	No date	June 17, 2009
2nd	Dec. 14, 2009	June 30, 2010	OIC-ACIR-LTS	No date	Dec. 29, 2009
3rd	Dec. 20, 2010	June 30, 2011	OIC-ACIR-LTS	No date	Dec. 28, 2010
4th	May 23, 2011	Dec. 31, 2011	OIC-ACIR-LTS	June 13, 2011	June 28, 2011
5th	Dec. 7, 2011	June 30, 2012	OIC-ACIR-LTS	Dec. 13, 2011	No receipt
6th	May 14, 2012	Sept. 30, 2012	OIC-ACIR-LTS	June 6, 2012	June 18, 2012

First, the most glaring defect of the 1st through 6th waivers is the fact that not one of them was signed by the CIR. It is specifically provided in RMO No. 20-90 that the BIR official authorized to sign waivers of the statute of limitations involving tax cases covering tax liabilities amounting to more than One (1) Million Pesos shall be the Commissioner of Internal Revenue.

In *Commissioner of Internal Revenue v. Republic Cement Corp.*[69], this Court has held:

> "Second, the signatory for the BIR is not authorized to sign the waivers. For tax cases involving more than P1,000,000.00, the Commissioner of Internal Revenue is the authorized signatory of the waivers. In this case, the second and third waivers were executed by Assistant Commissioner for Enforcement Service; while the first and fourth waivers were signed by Assistant Commissioner for Large Taxpayer Service and a Revenue Official, respectively."

The deficiency tax involved in this case clearly exceeds one (1) million pesos. A waiver signed by a revenue officer, and not by the CIR is defective and does not have any binding effect, "because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality."[70] As the subject waivers were not signed by the CIR, the proper signatory, the waivers are defective and do not produce any binding effect.

[68] Officer-in-Charge Assistant Commissioner of the Large Taxpayers Service.
[69] CTA EB No. 421 (CTA Case No. 6823), May 29, 2008.
[70] *Id.* at Note 74.

Second, as observed by the Court in Division, the first, second, and third waivers do not indicate the dates of their acceptance by the officials of the BIR as required by RMO No. 20-90.

Third, a copy of the 5th waiver was not provided to Total after its signing by the CIR. Thus, the acceptance was not communicated to Total as required by RMO No. 20-90.

Fourth, the kind and amount of tax due were not indicated in the waivers. This Court has previously held that if the amount and kind of tax were not indicated in the said waiver, there is, logically, no agreement to speak of.[71] As all six subject waivers failed to comply with this requirement, they are all defective and could not have extended the period for which an assessment may be issued.

Fifth, all waivers also show that they were not notarized on the part of the BIR. Only the representative of Total appeared before a notary public and acknowledged that the said waiver was his own voluntary act.

From the foregoing, it is evident that the 1st waiver, in and of itself, was already defective and infirm. Consequently, it could not validly serve to extend the prescriptive period within which the CIR could assess Total. As found by the Court in Division, the CIR had, at most, until January 30, 2010 to assess Total for deficiency VAT for taxable year 2007. As the FLD/FAN was dated September 19, 2012, the assessment was issued clearly beyond the three-year prescriptive period.

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporations*[72], the Supreme Court held:

> "**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**

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[71] Pfizer, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6135, April 21, 2003; Dole Philippines v. Commissioner of Internal Revenue, CTA Case No. 5705, July 1, 2003; *see also* Commissioner of Internal Revenue v. Maruka Enterprises, CTA EB No. 105, June 1, 2006; SMC Stock Transfer Service Corporation v. Commissioner of Internal Revenue, CTA Case No. 7944, January 10, 2012.
[72] G.R. No. 178087, May 5, 2010.

> **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.
>
> 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.**
>
> **As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable."** *(Emphasis supplied)*

As regards the CIR's assertion that estoppel applies to Total as exemplified in the *RCBC* case, this issue was comprehensively studied and discussed in the assailed Resolution which held that the *RCBC* case was not on all fours with the case at bar. The Court in Division cited ***Avon Products Manufacturing, Inc. vs. CIR***[73] wherein the Court *En Banc* made a detailed discussion on the factual milieu of the *RCBC* Case, *to wit:*

> "A revisit on the factual milieu of the *RCBC Case* is necessary in order to put things in the proper perspective. In the said case, RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code. In denying the said petition, this Court *En Banc* ruled that:

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[73] CTA EB Nos. 661 and 663, Resolution dated April 10, 2012.

> 'On January 27, 2000, petitioner received a Formal Letter of Demand and 14 assessment notices covering deficiency income taxes, deficiency gross receipt taxes, deficiency final taxes on FCDU onshore income, deficiency expanded withholding taxes and deficiency documentary stamp tax, all for the taxable years 1994 and 1995, amounting to P4,170,058,634.49, which are all covered by the aforesaid waivers. Petitioner then filed a protest to said assessments.
>
> On November 20, 2000, petitioner filed its Petition for Review before this Court. On December 6, 2000, while the petition was pending before this Court, petitioner received from respondent another Formal Letter of Demand and 14 assessment notices. This was the result of the reinvestigation requested by petitioner from respondent. **The original assessments in the total amount of P4,170,058,634.49 were reduced to P303,160,495.55.** On even date, petitioner paid the assessments for Deficiency Income Tax, Deficiency Gross Receipts Tax, Deficiency Final Withholding Tax, Deficiency Expanded Withholding Taxes and Deficiency Documentary Stamp Tax.
>
> **By receiving and accepting the reduced assessment, and paying portions of the reduced assessments thereof, petitioner in effect binds itself to the new assessment. Consequently, it follows that petitioner recognized the validity of the waivers. Petitioner cannot now question its validity, specially, after it has received and accepted certain benefits as a result of the execution of the subject waivers. A party should not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations. This is a settled rule in this jurisdiction.'** [Emphasis supplied]

It may be gleaned from the foregoing that the premise of the ruling of this Court *En Banc*, as affirmed by the Supreme Court, is the fact that RCBC has received and accepted "benefits" as a result of the execution of the subject waivers of statute of limitations. *First,* the records disclosed that there was a revised assessment issued by CIR within the extended period as provided for in the questioned waivers, which drastically reduced the amount of assessment from P4,170,058,634.49 to P303, 160,495.55. *Second,* there was a finding from the Court *a quo* that RCBC had received and accepted certain "benefits" from the reduced amount of Final Assessment as a result of the execution of the said waivers when it simultaneously paid the revised assessments for deficiency Income Tax, deficiency Gross Receipts Tax, deficiency Final Withholding Tax, deficiency Expanded Withholding Taxes and Deficiency Documentary Stamp Tax on the same day it received the Formal Letter of Demand and Assessment Notices dated October 20, 2000. *Third,* after RCBC has "benefited" from the reassessments and satisfied its obligation with the foregoing taxes, it thereafter assailed the validity of the same questioned waivers with respect to the remaining deficiency Final Tax on FCDU Onshore Income and deficiency Documentary Stamp Tax on Special Savings Account.

A review of the records of this case shows that, except for the amount of interest, the Formal Letter of Demand and the Final Assessment Notices (FAN), all dated February 28, 2003, reflect exactly the same deficiency taxes listed in the Preliminary Assessment Notice (PAN) dated November 29, 2002. Otherwise stated, unlike in the *RCBC Case* above-cited, there was no revised assessment issued by the CIR that would indicate a reduction in the assessed deficiency taxes of petitioner within the extended period as provided for in the questioned waivers. As a matter of fact, the petitioner was able to establish that there was an increase in the assessed deficiency taxes when the CIR increased the alleged sales discrepancy from P15.7 Million in the preliminary findings during the informal conference to P62.9 Million as stated in the PAN and FAN. Further, it must be emphasized that AVON's partial payment of the portion of the Final Assessment does not imply that it recognized the validity of the questioned waivers because AVON cannot be considered to have "benefitted" from the execution of the said waivers so as to be precluded from assailing their validity."

Taking its cue from the discourse of the *RCBC case* in the *Avon case*, the Court in Division came to the following conclusions as regards its applicability to the case at bar:

"In the instant case, the amount assessed in the PAN dated July 25, 2012 was not substantially reduced in the FLD and FAN dated September 19, 2012, as shown in the table below:

Tax Type	PAN[74]		FLD&FAN[75]	
Income Tax				
Basic	P 7,618,884.20		P 7,567,835.49	
Interest	8,063,065.15		8,261,049.22	
Compromise Penalty	50,000.00	P 15,731,949.35	50,000.00	P 15,878,884.71
VAT				
Basic	P 8,256,239.26		P 6,514,720.92	
Interest	9,150,389.97		7,383,133.22	
Compromise Penalty	50,000.00	17,456,629.23	50,000.00	13,947,854.14
Withholding Tax on Compensation				
Basic	P 33,823.28		P 33,823.28	
Interest	37,486.34		38,331.92	
Compromise Penalty	8,500.00	79,809.62	8,500.00	80,655.20
Final Withholding		10,000.00		10,000.00
Tax - Compromise				
Penalty				
Compromise Penalty		50,000.00		50,000.00
Total		**P 33,328,388.20**		**P29,967,394.05**

In contrast, in the RCBC Case, the original amount of deficiency taxes in the total amount of P4,170,058,634.49 was **drastically reduced** to P303,160,496.55. Hence, herein petitioner cannot be considered to have received 'benefits' as a result of the execution of the subject waivers. The partial payment of the assessment contained in the FLD/FAN does not imply that petitioner recognized the validity of the subject waivers. Thus, petitioner is not estopped from questioning the validity of the waivers.

Moreover, as observed by respondent, petitioner already raised the defense of prescription in its protest[76] to the FLD and FAN arguing that the right of the BIR to assess had already prescribed. Even though there was no mention of the waivers executed, by invoking the defense of prescription, petitioner is impliedly repudiating the waivers it executed. Further, the waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.[77]

The fact that petitioner never questioned the waivers in its protest to the PAN should not be used against petitioner. It must

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[74] Exhibit "J", docket, pp. 1029-1040.
[75] Exhibits "L" and "M", docket, pp. 1047-1058.
[76] Exhibit "O", docket, p. 1059-1064.
[77] *Bank of the Philippines Islands vs. CIR*, G.R. No. 139736, October 17, 2005.

> be emphasized that a protest to the PAN is not the same as the protest required to be filed as an answer to the FAN. In fact, a PAN may or may not even be protested to by the taxpayer.[78]
>
> In view of the foregoing, the principle of estoppel does not apply. Instead, as sufficiently discussed in the assailed Decision, the Supreme Court's decision in *CIR vs. Kudos Metal Corporation*[79] applies in the instant case."

We find no reason to disturb these findings. Furthermore, as *We* have previously held that the assessment was issued beyond the prescriptive period and that the executed waivers that sought to extend the same were defective and infirm, it follows that Total is not liable to pay the deficiency VAT assessment for taxable year 2006.

WHEREFORE, premises considered, the assailed Decision of the Second Division dated July 13, 2015, and its Resolution dated September 28, 2015, are hereby **AFFIRMED** *in toto*, and the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[78] *Security Bank Corporation vs. CIR*, CTA Case No. 6564, November 28, 2006.
[79] G.R. No. 178087, May 5, 2010.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Catherine T. Manahan
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 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. 1367** (CTA Case No. 8608)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
TOTAL (PHILIPPINES) CORPORATION *Respondent.*	Promulgated: ~~MAY 25 2017 4:02 p.m.~~

X---X

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia's* conclusion that the right of petitioner to assess respondent for deficiency Value Added Tax (VAT) for the first quarter of year 2006 has already prescribed. Anent the deficiency VAT assessment covering the second, third and fourth quarters of year 2006, I am of the view, however, that the same is not barred by prescription.

First Quarter of 2006

The issue of the First Waiver's validity or invalidity is insignificant in determining the prescription of petitioner's right to assess respondent for deficiency VAT for the first quarter of 2006.

Records reveal that respondent filed its Original First Quarterly VAT Return on April 25, 2006[1] and its Amended First Quarterly VAT Return on April 26, 2006.[2] Pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner had three (3) years from April 26, 2006 or until April 26, 2009 within which to assess respondent for deficiency VAT for the first quarter of 2006.

Significantly, at the time of the execution of the First Waiver on May 26, 2009,[3] petitioner's right to assess respondent for deficiency VAT for the first quarter of 2006 had already prescribed, thus, there was no prescriptive period to extend. Accordingly, the Final Assessment Notice (FAN) issued by petitioner on September 19, 2012 and received by respondent on September 21, 2012 - - **in so far as it assesses respondent for deficiency VAT for the first quarter of year 2006** - - must be cancelled for being barred by prescription. Consequently, the Final Decision on Disputed Assessment (FDDA) dated January 8, 2013, demanding from respondent the payment of deficiency VAT for the first quarter of 2006, must likewise be set aside.

Second, Third and Fourth Quarters of 2006

With due respect, I dissent in the cancellation and withdrawal of the deficiency VAT assessment covering the second to fourth quarters of 2006 based on the finding that the Waivers executed by both parties are infirm.

I noted that the conclusions in the assailed Decision and Resolution were made on the basis of the then prevailing jurisprudence which emphasize the significance of strict compliance with the procedure for execution of a waiver. Since the Waivers did not comply with the procedure set forth by the Bureau of Internal Revenue (BIR) itself, the Court in Division invalidated the Waivers and ruled that the same were not sufficient to extend the prescriptive period for the petitioner to assess respondent of deficiency VAT for the year 2006.

In *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[4], which was

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[1] Exhibit SSS, Division Docket, pp. 1631 to 1632.
[2] Exhibit TTT, Division Docket, pp. 1633 to 1634.
[3] Par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 860.
[4] G.R. No. 212825, December 7, 2015.

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 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 pronouncement in the *Next Mobile case* 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 justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5]

In the present case, while it may be true that the Waivers executed by the parties are defective, yet respondent's positive acts subsequent to the issuance of the Waivers constitute estoppel on its part from claiming that the Waivers are invalid and that the FAN, assessing it for deficiency VAT assessment issued against it for the second, third and fourth quarters of year 2006, was issued beyond the prescriptive period. **Respondent performed acts that induced petitioner to defer the issuance of the FAN.**

As afore-stated, to extend the prescriptive period to assess respondent for deficiency taxes for the year 2006, respondent voluntarily executed six (6) Waivers. Respondent's subsequent act of issuing the Second to Sixth Waivers without raising the infirmity of the First Waiver constitutes bad faith on its part, to say the least. As a necessary consequence of the issuance of the Waivers, petitioner delayed the issuance of the FAN. The issuance of the FAN,

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[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.

assessing respondent for deficiency VAT for the year 2006 was necessarily postponed by petitioner for three (3) years, relying on the Waivers he executed with respondent.

The FAN dated September 19, 2012, assessing respondent for deficiency VAT for the year 2006, was received by respondent on September 21, 2012, which is within the extended period provided for in the Sixth Waiver. Respondent is estopped from impugning the validity of the Waivers where it derived benefit therefrom and where the defects are also attributable to its own negligence.

I had the occasion to address a similar issue in my Dissenting Opinion in the case of *Commissioner of Internal Revenue vs. DOLE Philippines, Inc.,*[6] *viz.*:

> "With all due respect, I hesitate to agree with the *ponencia* in denying the Petition for Review and affirming the findings of the CTA Second Division that the assessments were issued way beyond the three (3) year prescriptive period. I note that in denying the present petition, the *ponencia* emphasized that since the waivers of the statute of limitations issued by respondent were invalid for failure to comply with the requirements and procedures laid down in Revenue Memorandum Order (RMO) No. 20-90, the three-year prescriptive period to assess petitioner for deficiency income tax and sales tax for the year 1986 was not extended.
>
> While it may be true that the waivers of the statute of limitations issued by respondent failed to comply with the requirements and procedures specified in RMO No. 20-90, it is my humble view that by reason of respondent's positive acts prior to and subsequent to the issuance of the deficiency income tax and sales tax assessments, respondent is estopped from claiming that the waivers were invalid and that the deficiency income tax and sales tax assessments for the year 1986 were issued beyond the prescriptive period.
>
> True, in *Commissioner of Internal Revenue vs. Kudos Metal Corporation* ('Kudos'), the Supreme Court held that the doctrine of estoppel may not be applied against a taxpayer, as an exception to the statute of

[6] CTA EB No. 1190, February 4, 2016.

limitations on the assessment of taxes, where the taxpayer's waiver of the prescriptive period to assess is fatally defective for non-compliance with appropriate guidelines thereon, as set forth by the Bureau of Internal Revenue (BIR) itself. *Kudos* even made a pronouncement on the inapplicability of the ruling in *Collector of Internal Revenue vs. Suyoc Consolidated Mining Company* ('*Suyoc*') for the reason that the controversy in *Suyoc* involved collection and not assessment of taxes, *viz*:

> '**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**. xxx xxx xxx.
>
> 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.**
>
> xxx xxx xxx
>
> In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*, the doctrine of estoppel prevented the taxpayer from raising the defense of prescription against the efforts of the government to collect the assessed tax. However, it must be stressed that in the said case, estoppel was applied as an exception to the statute of limitations on *collection* of taxes and not on the *assessment* of taxes, as the BIR was able to make an assessment within the prescribed period. More important, there was a finding that the taxpayer made several requests or positive acts to convince the government to postpone the collection of taxes xxx.
>
> Conversely, in this case, the assessments were issued beyond the prescribed period. Also, <u>**there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments.**</u>' (Emphases supplied)

The foregoing pronouncement in *Kudos*, however, should not in any way be construed as a doctrine that proscribes absolutely the application against a taxpayer of the concept of estoppel as an exception to the statute of limitations on the assessment of taxes. For:

<u>One.</u> In rejecting the application of estoppel against the taxpayer, **the Supreme Court noted in *Kudos* that there was <u>no positive act</u> on record to show that the said taxpayer persuaded the BIR to postpone the issuance of an assessment.** Conversely, had such positive act been shown on record, the conclusion upon

which the ruling was based would not have any factual moorings and *Suyoc* would have been applicable.

In other words, it can be inferred from *Kudos* that when there is a showing that the taxpayer performed acts that persuaded the BIR to delay the issuance of the deficiency tax assessments, **the doctrine of estoppel may still be applicable and may thus operate to prevent the taxpayer from raising the defense of prescription against the government's right to assess.** Stated differently, the non-application of the doctrine of estoppel, as an exception to the statute of limitations on the assessment of taxes, is not absolute as it depends on the special factual circumstances of each case.

Two. No less than the Supreme Court applied the doctrine of estoppel against a taxpayer **on an assessment case** after elucidating the concept of estoppel. On this point, I find the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* ('RCBC') most enlightening, *viz.*:

> 'Under Article 1431 of the Civil Code, **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 disapproved as against the person relying thereon.** A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.
>
> Estoppel is **clearly** applicable to the case at bench. **RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers.** Had 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. xxx xxx xxx.

In *RCBC*, the partial payment of the revised assessment by RCBC was regarded by the Supreme Court as an action that belies its position that the waivers it issued are invalid and did not extend the prescriptive period to assess. There is nothing, however, in *RCBC* which holds that it is only the payment of the assessed amount, albeit partial, which would constitute as an overt or positive act that could put the taxpayer in estoppel. **Thus, as earlier interpreted, I submit that whether or not the doctrine of estoppel will be applied as an exception to the statute of limitations on the**

assessment of taxes must depend upon the facts of the case. In this case, I am of the humble view that the positive acts of respondent rightfully calls for its application.

Moreover, in the recent case of ***Commissioner of Internal Revenue vs. Next Mobile Inc.*** (*formerly Nextel Communications Phils., Inc.*) (*'Next Mobile'*)[,] 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 suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities**.' (Emphases supplied)

xxx xxx xxx

In fine, by virtue of respondent's own actions, the government has been persuaded to postpone the issuance of the assessment and delay the collection of the deficiency tax assessments. By the principle of estoppel, respondent should not be allowed to question the validity of the waivers and raise the defense of prescription against the government's right to assess and eventually, to collect, the deficiency income tax and sales tax for the year 1986. Impugning the validity of the waivers after benefiting therefrom and allowing respondent to rely on the same is simply too abhorrent, to say the least. In the language of *Next Mobile*, *supra*:

> '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**.

xxx xxx xxx

> 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. xxx **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**.'"(Emphases supplied; Additional boldfacing supplied)

The positive acts of respondent depict an admission that the six (6) Waivers are valid. Thus, applying the pronouncement in *Next Mobile*, respondent is estopped from questioning the validity of the said Waivers and the issuance of the corresponding FAN within the extended period. Stated differently, by the principle of estoppel, respondent should not be allowed to question the validity of the Waivers and raise the defense of prescription against the government's right to assess it for the deficiency VAT for the second, third and fourth quarters of 2006. **Impugning the validity of the Waivers from which it benefited and after persuading petitioner to postpone the issuance of the FAN is palpably reprehensible.**

I am not unaware of the recent pronouncement in *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.,*[7] where the Supreme Court declared as void a waiver of prescription with a pronouncement that "the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself". Yet, the doctrine laid out therein is **inapplicable** to the present case as the *Philippine Daily Inquirer* case does not involve a scenario, as that obtaining herein, where both the taxpayer and the Government are *in pari delicto* in causing the infirmities of the subject Waivers.

All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review filed by petitioner Commissioner of Internal Revenue. The case should be remanded to the Court in Division to resolve the merits of the deficiency VAT assessment for the **second, third and fourth quarters of year 2006** and to determine the amount of respondent Total (Philippines) Corporation's deficiency VAT liability for the said quarters, if any.

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] G.R. No. 213943, March 28, 2017.