REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CAMPAIGNS AND GREY, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9420

Members:

DEL ROSARIO, *P.J.,Chairperson, and,*
MANAHAN,*JJ.*

Promulgated:

SEP 24 2020 8:05am

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by Campaigns and Grey, Inc., praying that a judgment be rendered ordering the annulment and reversal of the Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of Internal Revenue on June 30, 2016 and the cancellation of the deficiency assessments against petitioner for taxable year 2006 in the aggregate amount of Php29,417,830.86.

THE PARTIES

Petitioner Campaigns and Grey, Inc. is a corporation duly organized and existing under Philippine laws to engage in the business of providing marketing, sales, promotional, below-the-line merchandising, and public relations consultancy, with registered office address at 2723 Sabio Street, Makati City.[1]

Respondent Commissioner of Internal Revenue is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes.[2] He may be served with orders and processes of this Court through the Litigation Division, Room 703, BIR Building, Diliman, Quezon City.[3]

THE FACTS

On September 25, 2007, respondent issued a *Letter of Authority* (LOA) No. 12329, authorizing Revenue Officers (ROs) T. Monge, F. Soriano and M. Rugayan, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1 to December 31, 2006, and to be supervised by Group Supervisor (GS) E. Espiritu.[4]

Thereafter, respondent released a letter dated November 17, 2008 which petitioner received on November 26, 2008,[5] informing the latter that its tax investigation was reassigned from the above-mentioned ROs to Revenue Officer (RO) Allan M. Maniego.

On August 27, 2009, petitioner, through its Senior Vice President (SVP) – Finance Rafael S. Liwag, subsequently executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC) of 1997, as amended, (*Waiver*), which was accepted by Assistant Commissioner Zenaida G. Garcia of the BIR – Large Taxpayer Service.[6] Thereafter, several Waivers were executed again by Mr. Rafael S. Liwag on behalf of petitioner and were

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[1] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 972; Exhibit "P-1", Docket – Vol. 2, pp. 563 to 578.
[2] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 972.
[3] *Id.*
[4] Exhibit "P-2", Docket – Vol. 2, p. 579; Exhibit "R-1", BIR Records – Folder 1, p. 1 Par. 1.3, Stipulation of Facts, JSFl, Docket – Vol. 2, p. 973.
[5] Exhibit "R-5", BIR Records – Folder 1, p. 9.
[6] Exhibit "P-4", Docket – Vol. 2, p. 583; Exhibit "R-6", BIR Records – Folder 1, p. 10. *cm*

also accepted by respondent.[7] Likewise, Ms. Mila G. Sy executed Waivers, for and on behalf of petitioner, which respondent also accepted.[8]

Respondent issued a Notice for Informal Conference on November 5, 2012, informing petitioner of the results of the tax investigation.[9]

Eventually, ROs Allan Maniego and Joel M. Aguila recommended the issuance of the Preliminary Assessment Notice (PAN) against petitioner.[10] The PAN dated April 11, 2013 with Details of Discrepancies was then issued by respondent, finding due from petitioner deficiency income tax, value-added tax (VAT), improperly accumulated earnings tax (IAET), expanded withholding tax (EWT), and withholding tax on compensation (WTC), in the respective amounts of ₱42,836,986.65, ₱135,581,238.85, ₱12,015,927.15, ₱9,974,101.86, and ₱130,266.94, inclusive of increments.[11]

Petitioner filed its *Reply* to the said PAN on July 9, 2013.[12]

Pursuant to email communications transmitted by RO Allan Maniego to petitioner dated July 29, 2013 and August 1, 2013 providing the detailed computations of some of the deficiency assessments,[13] petitioner subsequently paid portions of the said deficiency taxes.[14]

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[7] Exhibits "P-8", "P-10", "P-12", and "P-15", Docket – Vol. 2, pp. 610, 612, 616, and 619, respectively; Exhibits "R-7", "R-8", "R-9", and "R-10", BIR Records – Folder 1, pp. 442, 443, 445, and 446, respectively.

[8] Exhibits "P-18", "P-23", "P-26", Docket – Vol. 2, pp. 624, 635, and 646, respectively; Exhibit "R-11", "R-12", and "R-16", BIR Records – Folder 1, pp. 447, 448a, and 478, respectively.

[9] Par. 1.4, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "P-21", Docket – Vol. 2, pp. 628 to 633; Exhibit "R-13", BIR Records – Folder 1, pp. 457 to 462.

[10] Exhibit "R-14", BIR Records – Folder 1, pp. 468 to 474.

[11] Par. 1.5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "P-25", Docket – Vol. 2, pp. 638 to 645; Exhibit "R-15", BIR Records – Folder 1, pp. 480 to 487.

[12] Par. 1.6, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "P-28", Docket – Vol. 2, pp. 649 to 653.

[13] Exhibits "P-29", "P-30", "P-31", and "P-32", Docket – Vol. 3, pp. 1303 to 1307.

[14] Exhibits "P-33" and "P-34", Docket – Vol. 3, pp. 1308 to 1309, and 1310 to 1311, respectively.

On February 20, 2014, RO Joel M. Aguila recommended that a Formal Letter of Demand (FLD) be issued against petitioner.[15] Thus, respondent issued the FLD dated March 17, 2014,[16] with Details of Discrepancies[17] and assessment notices[18] (FANs),for petitioner's alleged deficiency income tax, VAT, IAET, and EWT, in the respective amounts of ₱38,006,648.81, ₱142,975,380.85, ₱3,890,232.65, and ₱10,804,802.86, respectively, or in the aggregate amount of ₱195,677,065.17.[19]

Petitioner filed its protest or request for reinvestigation of, the said FLD and FANs on April 16, 2014,[20] and submitted its complete supporting documents on June 16, 2014.[21]

In response to the protest or request for reinvestigation filed by petitioner, RO Aguila recommended the issuance of the FDDA.[22]

On June 30, 2016, the assailed FDDA was issued,[23] assessing petitioner for deficiency taxes, inclusive of surcharge, interest, and compromise penalty,[24] to wit:

VAT	₱ 11,555,920.35
IAET	4,988,308.65
EWT	12,798,601.86
Compromise Penalties	75,000.00
TOTAL	**₱ 29,417,830.86**

[15] Exhibit "R-17", BIR Records – Folder 1, pp. 578 to 590.
[16] Par. 1.7, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "R-18", BIR Records – Folder 1, pp. 596 to 598.
[17] Exhibit "R-18-A", BIR Records – Folder 1, pp. 592 to 595.
[18] Exhibits "R-19", "R-19-A", "R-19-B", and "R-19-C", BIR Records – Folder 1, pp. 588 to 591.
[19] Exhibit "P-35", Docket – Vol. 2, pp. 663 to 682.
[20] Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "P-36", Docket – Vol. 2, pp. 683 to 692.
[21] Par. 1.9, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "P-37", Docket – Vol. 2, pp. 721 to 722.
[22] Exhibit "R-20", BIR Records – Folder 1, p. 651.
[23] Par. 1.10, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973.
[24] Par. 1.11, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 973; Exhibit "P-38", Docket – Vol. 2, pp. 723 to 731; and Exhibits "R-21", "R-21-A", "R-21-B", "R-22", "R-22-A", "R-22-B", and "R-22-C", BIR Records – Folder 1, pp. 672 to 680.

On August 10, 2016, petitioner filed this Petition for Review.[25] The instant case was originally raffled to this Court's Third Division.

Respondent posted his Answer on November 14, 2016,[26]

Petitioner filed its Reply to respondent's Answer on November 28, 2016.[27]

The Pre-Trial Conference was set and held on March 21, 2017.[28]Respondent's Pre Trial Brief was submitted on March 9, 2017,[29] while petitioner filed its Pre-Trial Brief on March 17, 2017.[30]

Upon the directive of the Court,[31] respondent transmitted the BIR Records of this case on January 6, 2017.[32]

The parties submitted their Joint Stipulation of Facts and Issues on April 4, 2017.[33] Consequently, the Court issued the Pre-Trial Order on April 21, 2017,[34] deeming the Pre-Trial Conference terminated.

As trial ensued, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Mila G. Sy,[35] petitioner's former Financial Director and Treasurer; (2) Atty. Aison Benedict C. Velasco,[36] petitioner's Assistant Corporate

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[25] Docket – Vol. 1, pp. 10 to 42.
[26] Docket – Vol. 1, pp. 164 to 176.
[27] *Reply*, Docket – Vol. 1, pp. 181 to 194.
[28] *Notice of Pre-Trial Conference* dated November 25, 2016, Docket – Vol. 1, pp. 179 to 180; Minutes of the hearing held on, and Order dated, March 21, 2017, Docket – Vol. 2, pp. 967, and 971 to 971-a, respectively.
[29] Docket – Vol. 1, pp. 243 to 246.
[30] Docket – Vol. 2, pp. 916 to 965.
[31] Resolution dated September 20, 2016, Docket – Vol. 1, p. 133.
[32] *Manifestation (Re: Submission of BIR Records)* dated January 5, 2017, Docket – Vol. 1, pp. 235 to 236.
[33] Docket – Vol. 2, pp. 972 to 989.
[34] Docket – Vol. 3, pp. 991 to 1006.
[35] Exhibit "P-75", Docket – Vol. 1, pp. 254 to 292; Exhibit "P-76", Docket – Vol. 3, pp. 1073 to 1078; Minutes of the hearing held on, and Order dated, August 8, 2017, Docket – Vol. 3, pp. 1113 to 1114.
[36] Exhibit "P-79", Docket – Vol. 1, pp. 433 to 439; Minutes of the hearing held on, and Order dated January 16, 2018, Docket – Vol. 3, pp. 1155 to 1156.

Secretary; (3) Mr. Severo A. Maraño III,[37] petitioner's Chief Accountant; (4) Atty. Jose Tomas C. Syquia,[38] petitioner's former Corporate Secretary; and (5) Ms. Krista V. Bambao,[39] the Court-commissioned Independent Certified Public Accountant (ICPA).[40]

The *Report* of the ICPA was submitted on July 12, 2017.[41]

Petitioner filed its Formal Offer of Documentary Evidence on January 25, 2018.[42] Respondent filed his Comment (on Petitioner's Formal Offer of Evidence) on February 5, 2018.[43]

The Court, in its Resolution dated March 12, 2018,[44] admitted petitioner's Exhibits, except for Exhibit "P-57" for failure to present the original for comparison.

Consequently, petitioner filed the Omnibus Motion for: A. Partial Reconsideration of the Resolution dated 12 March 2018; and B. The Admission of Exhibit "P-57" as Secondary Evidence on March 27, 2018.[45] Respondent did not file any comment/opposition thereto.[46] In any event, notwithstanding the said Motion, the Court still denied the admission of Exhibit "P-57", in the Resolution dated May 23, 2018.[47]

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[37] Exhibit "P-68", Docket – Vol. 1, p. 472 to 500 and Docket – Vol. 2, pp. 501 to 562; Minutes of the hearing held on, and Order dated, July 11, 2017, Docket – Vol. 3, pp. 1046 and 1064, respectively.

[38] Exhibit "P-77", Docket – Vol. 2, pp. 904 to 908; Minutes of the hearing held on, and Order dated, September 5, 2017, Docket – Vol. 3, pp. 1115 to 1116.

[39] Exhibit "P-80", Docket – Vol. 3, pp. 1132 to 1139; Minutes of the hearing held on, and Order dated January 16, 2018, Docket – Vol. 3, pp. 1155 to 1156.

[40] *Oath of Commission* dated June 13, 2017, Docket – Vol. 3, p. 1044; Exhibit "P-67", Docket – Vol. 3, pp. 1012 to 1016; Minutes of the hearing held on, and Order dated, June 13, 2017, Docket – Vol. 3, pp. 1043 and 1045.

[41] Docket – Vol. 3, pp. 1048 to 1063.

[42] Docket – Vol. 3, pp. 1157 to 1211.

[43] Docket – Vol. 4, pp. 1766 to 1767.

[44] Docket – Vol. 4, pp. 1770 to 1771.

[45] Docket – Vol. 4, pp. 1772 to 1778.

[46] *Records Verification Report* dated April 17, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 4, p. 1783.

[47] Docket – Vol. 4, pp. 1785 to 1789.

Respondent likewise set forth his documentary and testimonial evidence. He offered the sole testimony of Mr. Joel Aguila,[48] Revenue Officer III of the BIR.

Pursuant to the Order dated September 27, 2018,[49] the instant case was transferred to this Court's First Division.

Thereafter, respondent sent his Formal Offer of Evidence on May 28, 2019, via courier.[50] Petitioner submitted its Comment (Re: Formal Offer of Evidence dated 27 May 2019) on June 13, 2019.[51]

In the Resolution dated July 29, 2019,[52] respondent's exhibits were all admitted in evidence.

Petitioner then filed its Memorandum on September 2, 2019,[53] while respondent's Memorandum was posted on September 30, 2019.[54]

On October 15, 2019, this case was submitted for decision.[55]

THE ISSUES

As stipulated, the following are the issues to be resolved by this Court, to wit:

"2.1 Whether or not [petitioner] validly issued all the waivers;

2.2 Whether or not the right of Respondent to assess [petitioner] for CY 2006 has prescribed;

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[48] Exhibit "R-24", Docket – Vol. 4, pp. 1794 to 1807; Minutes of the hearing held on, and Order dated, July 17, 2018, Docket – Vol. 4, pp. 1814 to 1815; Order dated May 14, 2019, Docket – Vol. 4, p. 1836.
[49] Docket – Vol. 4, p. 1824.
[50] Docket – Vol. 4, pp. 1840 to 1846.
[51] Docket – Vol. 4, pp. 1849 to 1855.
[52] Docket – Vol. 4, pp. 1859 to 1860.
[53] Docket – Vol. 4, pp. 1870 to 1913.
[54] Docket – Vol. 4, pp. 1918 to 1934.
[55] Resolution dated October 15, 2019, Docket – Vol. 4, p. 1938.

2.3 Whether or not [petitioner] is liable for the deficiency VAT assessment;

2.4 Whether or not [petitioner] is liable for the IAET assessment;

2.5 Whether or not [petitioner] is liable for the deficiency EWT assessment; and

2.6 Whether or not [petitioner] is liable to pay compromise penalties."[56]

Petitioner's arguments:

Petitioner preliminarily challenges the validity of the Waivers executed for the extension of the prescriptive period to assess the deficiency taxes for taxable year 2006, alleging substantial defects therein in both form and substance which render all Waivers void and without any effect.

Petitioner avers that all the eight (8) waivers executed are void because the first waiver failed to toll the running of the prescriptive period, rendering the remaining seven (7) other waivers to be ineffectual. Even assuming that all waivers were timely executed, petitioner asserts that the following inherent defects likewise render them void:

1. Absence of a written and notarized authority of the signatory;
2. No date of acceptance;
3. Improper notarization of the Waivers.

Petitioner additionally contends that the deficiency tax assessments are void because RO Aguila, who supposedly conducted the audit, was not included among the revenue officers authorized in the LOA.

On the substantive merits of the deficiency tax assessments, petitioner submits that the deficiency assessments for VAT, IAET, EWT for taxable year 2006 and

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[56] Stipulation of the Issues, JSFI, Docket – Vol. 2, p. 974. am

the imposition of the compromise penalty are all unfounded in law and in fact, hence, it is not liable to pay such taxes.

Respondent's counter-arguments:

Respondent posits that the Waivers, duly executed by petitioner's duly authorized representatives, validly extended the period to assess petitioner; and that petitioner was liable for deficiency VAT, IAET, EWT, and compromise penalties.

We quote below respondent's Special and Affirmative Defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

The waivers, duly executed by petitioner's duly authorized representatives validly extended the period to assess petitioner.

5. Petitioner claimed that respondent's right to assess has prescribed since the Formal Letter of Demand (FLD) was issued beyond the three-year period of assessment anchoring its claim on Section 203 of the Tax Code, 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 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.

6. Respondent disagrees.

7. The case at hand falls squarely as an exception to Section 203 of the Tax Code – that is when both the taxpayer and the Commissioner have agreed in writing to extend the time for assessment. Section 222 of the Tax Code states:

> **SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** –
>
> - xxx -
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.**
>
> The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
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> - xxx -
>
> **(Emphasis supplied).**

8. In the instant case, petitioner executed not one (1) but seven (7) Waivers of the Defense of Prescription for it to be able to submit and/or present the required books of accounts and other accounting records to facilitate the examination in connection in connection with audit and/or investigation of all its internal revenue taxes for taxable year 2006.

9. Such actions on part of petitioner validly extended the period to assess petitioner.

10. Petitioner, however, contended that the waivers it executed were invalid because: (1) the waivers were not accompanied by a Board Resolution authorizing the signatories to the waivers, (2) there was no date of acceptance made by the Bureau of Internal Revenue and (3) the notarization appearing on the waiver was defective.

11. Respondent begs to differ. *cm*

12. First, it must be emphasized that an authority to sign the waiver is not needed when the waiver is signed by the taxpayer itself thru its responsible officials. Revenue Memorandum Order No. 20-1990 is clear:

> The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:
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> - xxx -
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> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. **In the case of a corporation, the waiver must be signed by any of its responsible officials.** In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> - xxx -
>
> (**Emphasis supplied**).

13. As here, petitioner, through its SVP for Finance, Rafael S. Liwag, and petitioner's Finance Director, Mila G. Sy voluntarily executed seven (7) Waivers of the Defense of Prescription to extend the period of assessment which were duly accepted by OIC-Assistant Commissioner Alfredo V. Misajon.

14. As SVP for Finance and Finance Director of petitioner, Rafael S. Liwag and Mila G. Sy acted in the course of their functions in signing the waivers. In fact, the Board of Directors is considered to have impliedly ratified their dealings with the Bureau of Internal Revenue by silence and acquiescence.

15. Accordingly, petitioner cannot assert now that its SVP for Finance, Rafael S. Liwag, and Finance Director, Mila G. Sy, are not responsible officials to execute the seven waivers (7) Waivers of the Defense of Prescription.

16. Petitioner further claimed that there was no date of acceptance in the waivers and that the notarization contained therein was defective.

17. Records disclose otherwise.

18. Contrary to petitioner's claim, all the Waivers contained dates of acceptance and proper notarizations.

19. Therefore, as evidence proves, the period to assess was validly extended by the due execution of the Waivers.

20. Moreover, the execution of the First and Second Waivers proved to be beneficial to petitioner considering that aforesaid waivers constituted as tools for petitioner by providing it enough time to gather its voluminous documents/records for the conduct of audit by respondent. The waiver eventually led to the issuance of the Preliminary Assessment Notice (PAN), Formal letter of Demand (FLD) and Final Assessment Notice (FAN). Petitioner failed to provide complete supporting documents to refute the findings despite ample time was given by respondent, thus, assessment for deficiency taxes still resulted after evaluation and consideration of the documents and explanation submitted by petitioner.

21. Thus, it is quite absurd and unfair that when the PAN, FLD and FAN proved to be adverse to petitioner, the very same waiver utilized by petitioner for its own advantage will now be used by the very same petitioner to defeat the validity of the waiver it voluntarily executed. Ergo, petitioner's deafening silence and failure to challenge the legality of the waivers within the administrative level operates as an estoppel on its part to question the same before the Honorable Court.

1. More importantly, the case of Next Mobile v. CIR is enlightening, to wit:

> 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 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 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.
>
> It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.

22. Therefore, the period to assess petitioner has not prescribed since there were valid agreements between petitioner and respondent, as evidenced by the duly executed Waivers of the Defense of Prescription, to extend the period of assessment.

Petitioner is liable for deficiency Value Added Tax.

23. Petitioner argued that it is allegedly not liable for deficiency Value Added Tax since there were no Input VAT claimed in the de-recognized trade account payables.

24. Petitioner's reason is without merit.

25. Audit and investigation based on documents provided by petitioner revealed that the trade accounts payable

amounting to P32,699,388.00 were extinguished by petitioner.

26. Hence, this amount should be considered taxable revenue.

27. Petitioner's claim that it did not claim any Input VAT pertaining to this amount is but an allegation without proof. Hence, deserves no consideration at all.

28. Time and again the Honorable Supreme Court has consistently held that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

29. Therefore, respondent's assessment for deficiency VAT in the aggregate amount of P11,555,920.34 must stand.

Petitioner is liable for deficiency Improperly Accumulated Earnings Tax (IAET).

30. Petitioner contended that it is not liable for deficiency IAET since the retained earnings for the prior year should not be added back to its current taxable income.

31. Respondent disagrees.

32. Section 29 of the National Internal Revenue Code states:

> **SEC. 29. Imposition of Improperly Accumulated Earnings Tax.** –
>
> (A) In General. – In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.
>
> (B) Tax on Corporations Subject to Improperly Accumulated Earnings Tax. –
>
> **1.** In General. – **The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed**

> **or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.**
>
> \- xxx -

(Emphasis supplied).

33. If follows, therefore, that the prior years retained earnings will be looked upon so that it can be determined as to whether there was accumulation of profits instead of distribution of dividends.

34. To say that only the current year's taxable income be examined for the purpose of the imposition of improperly IAET would definitely defeat the purpose of the law.

35. In the case at hand, investigation revealed that petitioner has improperly accumulated income in the amount of P17,209,196.50.

36. Hence, accordingly, it should be subjected to the ten percent (10%) IAET and petitioner must pay deficiency IAET in the aggregate amount of 4,988,308.65.

Petitioner is liable for deficiency Expanded Withholding Tax (EWT).

37. Petitioner maintained that it is not liable for EWT since either it has paid the EWT due or that it is not required to withhold EWT.

38. Again, petitioner's contentions are mere contentions without proof.

39. Petitioner has not presented credible evidence to merit consideration.

40. Thus, the assessment for deficiency EWT must be held as valid.

The compromise penalties were merely included as a suggestion for petitioner to avoid criminal prosecution.

41. Lastly, petitioner submitted that compromise penalties cannot be imposed without the consent of the taxpayer.

42. Respondent agrees with petitioner that the essence of compromise penalties is mutuality and it cannot be imposed without the agreement or conformity of the taxpayer.

43. The Honorable Supreme Court in the case of Philippines International v. CIR held that:

> However, with respect to the compromise penalty in the total sum of ₱13,200.00, we have repeatedly held **that this Court has no jurisdiction to compel a taxpayer to pay the same because by its very nature it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised and the choice of paying or not paying it distinctly belongs to the taxpayer.**
>
> **(Emphasis supplied).**

44. In fact, respondent only included such portion as a suggestion to petitioner to pay it in lieu of criminal prosecution pursuant to Revenue Memorandum Circular No. 17-1990, specifically:

> \- xxx -
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> **III. Guidelines and Instructions:**
>
> 1. The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex 'A' to ensure uniformity of action.
>
> 2. In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule, except when duly approved by the Commissioner or, in a proper case, by the Regional Directors.
>
> **3. Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter along with the other administrative penalties like surcharge and interest, the same should not form part of the total amount assessed/demanded but should appear separately as a suggestion to the taxpayer to pay lieu of criminal prosecution. If paid, the compromise penalties shall be collected and**

> **accounted for under the usual procedures, as internal revenue.**
>
> 4. Since compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred for criminal action as heretofore mentioned.
>
> - xxx -
>
> **(Emphasis supplied).**

45. Thus, it is well within the prerogative of petitioner to decide whether to heed respondent's suggestion to pay the compromise penalties to avoid criminal prosecution."

RULING OF THE COURT

The petition is meritorious.

Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, provides for the period of limitation upon the assessment 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 a case where a return is filed beyond the period prescribed by law, the three-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." (emphasis supplied)

Thus, except as provided in Section 222 of the 1997 NIRC, as amended, the foregoing 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 of such return, whichever comes later.[57] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[58]

By way of an exception, however, under Section 222 of the 1997 NIRC, as amended, there are instances when the government may assess pertinent taxes against taxpayers even beyond the said three-year prescriptive period, and we quote:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed** or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (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.
>
> xxx xxx xxx." (emphasis supplied)

Based on Section 222 (a), in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.

Moreover, under Section 222 (b), the three-year prescriptive period under Section 203 of the NIRC of 1997 may be extended, if before the expiration thereof, both respondent and the taxpayer have agreed in writing to its assessment. Thereafter, the pertinent tax may be assessed within the period agreed upon.

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

[58] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015. crm

Indeed, a Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[59] 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.[60]

The BIR has issued several administrative issuances, through the years, to implement the afore-quoted Section 222 (b) of the 1997 NIRC, as amended, foremost among which is Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001 followed by Revenue Memorandum Circular (RMC) No. 06-2005 dated February 2, 2005 and the most recent RMO No. 14-2016 which was issued on April 4, 2016. The guidelines set in these administrative issuances in the execution of the Waivers have also become the parameters to be followed to determine their validity as developed by jurisprudence.

In the case of *Philippine Journalists, Inc. vs. CIR,*[61] the Supreme Court adhered to the strict policy of complying with the requirements of RMO 20-90 in order for a Waiver to be declared valid and have the effect of extending the BIR's right to assess. In the case of *CIR vs. Kudos Metal Corporation,*[62] the High Court similarly applied the strict application of the requirements of RMO 20-90 to determine the validity of a Waiver and it categorically ruled that the defects in the Waiver (for failure to comply with RMO 20-90) did not have the effect of extending the BIR's period to assess deficiency taxes. However, in 2015, the Supreme Court provided a slight twist to its rulings in the *Philippine Journalists* and *Kudos Metal* cases and applied the *pari delicto* principle where two parties to a Waiver are equally at fault, hence they have no action against each other leading to the conclusion that the Waivers have the effect of extending the BIR's period to assess.[63] This was followed by the case of *Asian Transmission Corporation vs. CIR,*[64] which adopted the ruling enunciated in the *Next Mobile* case.

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[59] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[60] *Id.*, citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* supra.
[61] G.R. No. 162852, December 16, 2004.
[62] G.R. No. 178087, May 5, 2010.
[63] CIR vs. Next Mobile, Inc., G.R. No. 212825, December 7, 2015.
[64] G.R. No. 230861, September 19, 2018.

Applying now the foregoing statutory, administrative and jurisprudential rulings to the instant case, the Court has the following findings:

The first Waiver was executed on August 27, 2009 making the provisions of RMO 20-90 and RDAO 05-01 applicable. Petitioner asserts that its own signatory to the waiver, Mr. Rafael S. Liwag, was not authorized to sign on its behalf as he had no written and notarized authority by way of a Board Resolution or Special Power of Attorney (SPA). However, despite this allegation of having no authority, petitioner continued to allow Mr. Rafael S. Liwag, who incidentally is its Vice-President of Finance, to sign the subsequent waivers along with Ms. Mila G. Sy, its own Finance Director. Petitioner additionally challenges the propriety of the notarization of the Waivers (which were notarized by a notary public in Quezon City) stating that their signatories never appeared in Quezon City for the notarization was done outside their office address in Makati City.

To our minds, petitioner would like this Court to use this defect of "no authorization" which it continued to allow in the execution of subsequent waivers, and adopt it to destroy the validity of the waivers.

Additionally, petitioner invokes the impropriety of the notarization alleging that its "non-authorized" signatory never personally appeared before the notary public in Quezon City, without presenting the said notary public during trial to validate such claim.

Given that the waivers also had other significant defects such as the lack of dates of the execution in some of the waivers, and no dates when these were accepted, We find that both parties to the Waivers (petitioner and respondent) are equally at fault. In the *Next Mobile* case, the Supreme Court declared that parties must come to court with clean hands, and we quote"

> "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 the 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. xxx xxx **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."** xxx xxx xxx (emphasis supplied)

In light of the ruling of the Supreme Court in the *Next Mobile* case, We find that the equitable principle of *pari delicto* applies in the instant case and thus the Waivers executed had the effect of suspending respondent's right to assess deficiency taxes for taxable year 2006.

Notwithstanding the above disquisitions, the Court finds that the assessments issued for taxable year 2006 must still fail because the RO who examined petitioner's books of accounts was not authorized through an LOA, thus, all of the subject tax assessments are void.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[65] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[66]

Therefore, there must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to respondent himself or his duly authorized representatives.[67]

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[65] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

[66] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

[67] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

This is explicitly provided under Sections 6(A) and 13 of the NIRC of 1997, which provide as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis added)*
>
> "SEC. 13.*Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Emphasis supplied)

Based on the afore-quoted provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[68] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[69] In the absence of such an authority, the assessment or examination is a nullity.[70]

It must be ensured that any examination of the taxpayer by the BIR's ROs is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[71]

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[68] *Ibid.*

[69] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178797, supra.

[70] *Ibid.*

[71] Refer to *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

Records reveal that ROs Allan Maniego and Joel M. Aguila were the ones who jointly recommended the issuance of the PAN,[72] but it was RO Aguila who finalized the FLD and the FDDA.[73] However, nothing in the records will show that an LOA was ever issued either to RO Maniego or RO Aguila, or to both of them, giving authorization to examine petitioner's books of accounts and other accounting records for taxable year 2006.

Instead of an LOA, a Memorandum of Assignment with Referral No. D38-07-08 was issued to RO Allan M. Maniego.[74] Moreover, the letter dated November 17, 2008 issued by OIC-Chief Regina C. Dela Cruz of the LT Audit & Investigation Division I[75] (who does not even have the rank of a Regional Director within the context of Section 13 of the 1997 NIRC, as amended), states that the tax investigation against petitioner was reassigned from RO Monge to RO Allan M. Maniego and that RO Joel M. Aguila will assist RO Maniego, to wit:

> "November 17, 2008
>
> The President
> CAMPAIGNS AND GREY, INC.
> 12th Floor Tower Condominium
> Valero St., Salcedo Village
> Makati City
>
> xxx xxx xxx
>
> This is to inform you that the investigation of your all internal revenue tax liabilities for the year 2006 pursuant to Letter of Authority No. 12329 dated September 25, 2007 is now assigned to Revenue Officer Allan M. Maniego due to transfer of RO Thelma F. Monge to LTAID II pursuant to Revenue Transfer Assignment Order No. 41-2008. In addition thereto, RO Joel M. Aguila will assist RO A. Maniego to facilitate early completion of the report.
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> xxx xxx xxx

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[72] Exhibit "R-14", BIR Records – Folder 1, pp. 468 to474.
[73] Exhibits "R-17" and "R-20", BIR Records – Folder 1, pp. 578 to 586, and 651.
[74] Exhibit "R-4", BIR Records – Folder 1, p. 7.
[75] Exhibit "R-5", BIR Records – Folder 1, p. 9.

(signed)
REGINA C. DELA CRUZ
OIC-Chief, LT Audit & Investigation
Division I

In the CTA *En Banc* case of *Composite Materials, Inc. vs. CIR,*[76] which was affirmed by the Supreme Court in the case of *CIR vs. Composite Materials, Inc.,*[77] it was held that a Referral Memorandum does not give authority to the new set of revenue examiners to conduct an examination of the taxpayer's records but rather an LOA validly issued by the Revenue Regional Director. We quote relevant portions of the CTA *En Banc* decision, as follows:

> "In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746 dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746 to examine petitioner CMI.
>
> xxx xxx xxx
>
> **The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Sections 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA."** (emphasis supplied)

Since there was no LOA issued to RO Maniego and/or RO Aguila, it is clear that they are not authorized to conduct any tax audit/investigation against the petitioner. Thus, the PAN, FLD, FANs, and FDDA which were issued as a result of ROs Maniego and Aguila's tax audit/investigation, are void.

Apropos, a void assessment bears no valid fruit.[78] Such being the case, all of the subject tax assessments cannot be enforced against petitioner. As such, it becomes

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[76] CTA *EB* No. 1314, August 15, 2017.
[77] G.R. No. 238352, September 12, 2018.
[78] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006; *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corp.*, G.R. No. 197945, July 9, 2018. *om*

unnecessary to address the remaining issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject FLD and FANs dated March 17, 2014, and the FDDA dated June 30, 2016, assessing petitioner for deficiency VAT, IAET, EWT, and compromise penalties, for taxable year 2006, in the total amount of ₱29,417,830.86, are hereby **CANCELLED and SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice