REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1190** (CTA Case No. 8155)
	Present:
-versus-	*Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
DOLE PHILIPPINES, INC., *Respondent.*	Promulgated: FEB 04 2016 10:15 a.m.

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DECISION

BAUTISTA, J:

The Case

This is a Petition for Review under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("CTA")*[1] seeking the nullification of the Decision promulgated on March 21, 2014 and the

[1] *Rules of Court,* Rule 42, sec. 1a.
SECTION 3. *Who May Appeal; Period to File Petition.* — xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Resolution promulgated on June 9, 2014 by the Second Division of the CTA ("Second Division") in the case of *"Dole Philippines, Inc. v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8155, involving deficiency Income Tax and Sales Tax assessment in the total amount of One Hundred Forty Six Million Seven Hundred Twenty One Thousand Ten Pesos and Ninety Centavos (Php146,721,010.90) for taxable year 1986.[2]

The Parties[3]

Dole Philippines, Inc. ("petitioner") is a corporation organized and existing under Philippine laws with principal business address at 6750 Ayala Avenue, Makati City. It is engaged in the business of manufacturing food products, which includes planting, growing, cultivating and harvesting pineapples and other agricultural crops, and raising and breeding cattle and other kinds of animals.

Commissioner of Internal Revenue ("CIR" or "respondent") is duly appointed and vested with authority to carry out all the functions, duties and responsibilities of the Bureau of Internal Revenue ("BIR") including *inter alia*, the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

As stated in the Decision[4] dated March 21, 2014, the factual antecedents of this case are as follows:

> Pursuant to a Letter of Authority [("LOA")] No. 0014562 dated October 30, 1987, [petitioner]'s revenue officers examined [respondent]'s books of account and other accounting records for internal revenue taxes covering taxable year 1986.
>
> To extend the prescriptive period for the assessment and/or collection of internal revenue taxes covering taxable year 1986, [respondent] executed four (4) Waivers of the

[2] *Records, CTA Case No. 8155*, p. 546.
[3] *Id.*, pp. 546-547.
[4] *Id.*, pp. 546-561.

Defense of Prescription Under the Statute of Limitations of the [1997] National Internal Revenue Code [("NIRC")].

As a result of the examination [petitioner] issued Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-0050247 dated November 24, 1993 and demanded payment of deficiency income and sales taxes for taxable year 1986 in the aggregate amount of [Php]146,721,010.90, inclusive of penalties and surcharges, computed as follows:

Deficiency Income Tax	P	50,562,398.00
Surcharges (25%)		12,640,599.50
Interest		83,219,386.80
Compromise		15,000.00
Total	**P**	**146,437,384.30**

Deficiency Sales Tax	P	93,963.40
Surcharges		23,490.85
Interest		160,172.35
Compromise		6,000.00
Total	**P**	**283,626.60**

On January 15, 1994, [respondent] filed a protest to the BIR and requested withdrawal and cancellation of the deficiency income tax assessment for lack of legal and factual bases. On the same day, [respondent] filed a letter-application to the Revenue National Approval Committee-BIR for Compromise Settlement/Abatement of Penalties, under Revenue Memorandum Order [("RMO")] No. 54-93, doubting the validity of the assessment issued against it. [Respondent] offered to pay the amount of [Php]93,963.40 representing its alleged basic sales tax due.

On February 11, 1994, [petitioner] approved [respondent]'s application for compromise settlement but reversed [the same] in an Order dated August 14, 1995 due to [respondent]'s failure to pay the compromise amount within the prescribed period. Thereafter, on June 6, 2003, [respondent] sought reconsideration of said order on the ground of substantial justice and reiterated its request to compromise the deficiency sales tax and pay the amount of [Php]93,963.40.

On October 30, 2003, the Assistant Commissioner, Collection Service[,] denied the request and ordered [respondent] to pay the deficiency sales tax amounting to [Php]283,626.60[,] exclusive of penalties, surcharge and interest.

Then on November 3, 2003, the entire case docket was forwarded to the Appellate Legal Division, Legal Service[,] for resolution of the legal issues and for collection of said deficiency sales tax.

On June 27, 2007, a Warrant of Distraint and/or Levy was issued against [respondent] demanding payment of [Php]146,700,010.90 covering both deficiency income tax and deficiency sales tax assessments.

Meanwhile, on February 19, 2007, Republic Act [("RA")] No. 9480 otherwise known as "Tax Amnesty Act of 2007[,"] was enacted granting tax amnesty for all unpaid national internal revenue taxes as of December 31, 2005 and prior years, with or without assessment issued therefor. To avail itself of the tax amnesty, the taxpayer shall file with the BIR a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth [("SALN")] as of December 31, 2005, and pay the applicable amnesty tax within six [(6)] months from the effectivity of [the] Act's implementing rules and regulations.

On February 22, 2008, Revenue Memorandum Circular [("RMC")] No. 19-2008 was issued by the BIR, setting the deadline for the filing of the availment of Tax Amnesty on March 6, 2008 pursuant to [RA] No. 9480.

Thus, on March 6, 2008 [respondent] availed itself of the tax amnesty under [RA] No. 9480 by filing with Revenue District Office [("RDO")] No. 122, Revenue Region No. 17[,] a Notice of Availment of Tax Amnesty and Tax Amnesty Return (BIR Form 2116). [Respondent]'s SALN as of December 31, 2005 was also attached thereto accompanied by the Tax Amnesty Payment Form (BIR Form 0617) having the amount of [Php]606,115.00 as payment thereof.

Nonetheless, on July 20, 2010, the CIR issued a final decision denying [respondent]'s protest of assessment and demanded payment for deficiency income and sales taxes for taxable year 1986 in the aggregate amount of [Php]146,721,010.90, plus interest that have accrued thereon until actual date of payment, within thirty (30) days from receipt thereof. Thereafter, LT District Officer Amparo M. Duque wrote to [respondent] on August 10, 2010, informing the latter that a decision has been issued by the CIR which constitutes as "the FINAL DECISION of this Office on the matter[."][Respondent] received said letter on August 13, 2010.

Aggrieved thereby, [respondent] filed the instant Petition for Review on September 13, 2010.

On October 29, 2010, [petitioner] filed her Answer raising the following special and affirmative defenses:

> "6. [Petitioner] adopts the abovementioned admissions and denials as part of her special and affirmative defenses;
>
> **[RESPONDENT] IS LIABLE FOR [DEFICIENCY] INCOME AND SALES TAXES**
>
> 7. As explained by [petitioner] in her final decision on [respondent]'s protest against Assessment Notice Nos. FAS-2-86-93- 005023 and FAS-5-86-93-005024, [respondent] was basically assessed the deficiency income tax because it reported in its 1986 Income Tax Return [("ITR")] the business expense incurred in the year 1985.
>
> 8. This fact was duly verified from [respondent]'s Notes to 1986 Financial Statements which revealed that said business expense pertains to the loss incurred in 1985, but was not accrued and charged to the 1985 income.
>
> 9. Settled is the rule that a business expense may only be claimed as deduction when it is ordinary and necessary, paid or incurred during the taxable year in carrying on the trade or business of the taxpayer and duly supported by records or pertinent papers.
>
> 10. It should be noted that the expense claimed by [respondent] against its gross income pertains to different years. The said expense was actually incurred in 1985, but was only claimed by [respondent] against its 1986 gross income.
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> 11. [Respondent] also failed to present the necessary records or pertinent papers to substantiate the deduction claimed in its 1986 ITR.
>
> 12. Consequently, [respondent]'s taxable income for the year 1986 was understated, thus, [respondent] was held liable for deficiency income tax amounting to [Php]146,437,384.30.
>
> 13. Moreover, [respondent]'s failure to pay within the prescribed period the amount of [Php]93,963.40, representing compromise settlement of deficiency sales tax for the year 1986, constrained [petitioner] to collect the original deficiency sales tax amounting to [Php]283,626.60 due from [respondent].

14. In which case, [respondent] is liable for both deficiency income and sales tax.

UNDER [RA NO.] 9480, [RESPONDENT] IS NOT AUTOMATICALLY IMMMUNE FROM PAYMENT OF TAXES FOR TAXABLE YEAR 2005 AND PRIOR YEARS.

15. [Respondent] has yet to present and prove to the Honorable Court that it fully complied with the requirements set forth under [RA No.] 9480, otherwise known as "Tax Amnesty Act of 2007" before it can claim that it is immune from payment of taxes for taxable year 2005 and prior years.

16. Under RA [No.] 9480, all immunities and privileges shall not apply where the taxpayer failed to file a [SALN] and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of 30% or more.

17. The Honorable Supreme Court in the case of *Bibiano V. Bañas, Jr. [v.] Court of Appeals, et al.* ruled that:

> "A tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty, like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority." *(Citations omitted)*

On November 3, 2010, [the Second Division] issued a Notice of Pre-Trial Conference setting the case for pre-trial conference on December 3, 2010 at 1:30 in the afternoon. [Petitioner] filed her Pre-Trial Brief on November 23, 2010 while [respondent] submitted its Pre-Trail Brief on November 30, 2010.

Thereafter, both petitioner and respondent submitted their Joint Stipulation of Facts and Issues on January 5, 2011. After finding everything in order, [the Second Division] issued a Pre-Trial Order on January 28, 2011, declaring the pre-trial terminated and ordering [respondent] to proceed with the initial presentation of its evidence.

After which[,] trial ensued. On February 20, 2012, the parties filed their Additional Joint Stipulation of Facts which [the Second Division] approved in its February 23, 2012 Resolution.

On March 27, 2012, [respondent] filed a Motion for Leave of Court (To admit attached Motion to submit case for Preliminary Determination of the Issues of Prescription and Availment of Tax Amnesty with Formal Offer of Evidence). In response, [petitioner] filed two (2) comments, the first [one was] filed on May 11, 2012 which pertains to [respondent]'s motion and the other on July 25, 2012 anent [respondent]'s formal offer of evidence.

In the July 20, 2012 Resolution, [the Second Division] denied [respondent]'s motion stating that since said motion is essentially a motion for summary judgment, [the Second Division] found genuine issues of fact that may only be settled through the conduct of a full blown trial on the merits.

On August 23, 2012, [the Second Division] issued another Resolution admitting [respondent]'s *Exhibits* "A" to "FF[,"] inclusive of sub-markings, and ordering [petitioner] to proceed with her presentation of evidence.

On June 28, 2013, [petitioner] filed her Formal Offer of Evidence, offering *Exhibits* "1" to "11-a[,"] inclusive of sub-markings. [Respondent] filed its Comment to [petitioner]'s Formal Offer of Evidence on July 12, 2013. Accordingly, [the Second Division], in the July 29, 2013 [R]esolution admitted all exhibits formally offered by [petitioner] and gave both parties a period of thirty (30) days upon receipt thereof within which to submit their respective [memoranda].

In compliance, [respondent] submitted its Memorandum on September 30, 2013, while [petitioner] submitted her Memorandum on October 29, 2013. [Respondent] filed a Reply-Memorandum on November 11, 2013.

Consequently, [the Second Division], in the November 12, 2013 Resolution, deemed the case submitted for decision.

The dispositive portion of the assailed March 21, 2014 Decision[5] reads as follows:

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the decision rendered by the Commissioner of Internal Revenue dated July 20, 2010 is **REVERSED** and the Assessment Notice Nos. FAS-2-86-93-

[5] *Id.*, pp. 546-561.

> 005023 and FAS-5-86-93- 005024 dated November 24, 1993 demanding payment in the total amount of One Hundred Forty Six Million Seven Hundred Twenty One Thousand Ten and 90/100 Pesos [(Php146,721,010.90)], inclusive of interest, representing alleged deficiency income and sales taxes for the taxable year 1986 are hereby **CANCELLED** and **WITHDRAWN** due to prescription.
>
> **SO ORDERED.**

Not satisfied with the Decision, petitioner filed by registered mail a Motion for Reconsideration[6] on April 10, 2014. Respondent filed its corresponding Comment/Opposition (To [Petitioner]'s Motion for Reconsideration)[7] on April 30, 2014.

On June 9, 2014, the Second Division issued a Resolution[8], where it held:

> **WHEREFORE**, premises considered, [petitioner's] Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Upon the denial, petitioner raised the instant case to the Court *En Banc* when it filed a Petition for Review[9] on July 17, 2014, praying that:

> **WHEREFORE**, in view of the foregoing, it is respectfully prayed that the Honorable Court **RECONSIDER, REVERSE, AND SET ASIDE** its *Decision* dated March 21, 2014, as well as the *Resolution* dated June 9, 2014, and **ISSUE** a new *Decision* which ultimately denies the *Petition for Review* applied for by respondent, and judgment be rendered ordering respondent to pay the amount of [Php]146,721,010.90 as deficiency income and sales tax for taxable year 1986, plus 25% surcharge and 20% deficiency and delinquency interest for late payment pursuant to Sections 248 and 249 of the 1997 NIRC.
>
> Petitioner likewise respectfully prays for such other reliefs which may be just and equitable under the premises.

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[6] *Id.*, pp. 577-587.
[7] *Id.*, pp. 591-599.
[8] *Id.*, pp. 601-602.
[9] *Rollo, CTA EB No. 1190*, pp. 6-39.

On October 22, 2014, respondent filed its Comment/Opposition[10].

On November 6, 2014, the Court issued a Resolution[11] ordering the parties to file their respective Memoranda within thirty (30) days.

On January 9, 2015, respondent filed its Memorandum[12]; while petitioner failed to file her memorandum, despite the extension given.[13]

On March 5, 2015, the Court promulgated a Resolution[14] submitting the case for decision, hence, this Decision.

The Issues

Based on the Petition for Review[15] filed by petitioner, the assigned errors/issues of the case are as follows:

WHETHER OR NOT PETITIONER'S RIGHT TO ASSESS RESPONDENT FOR DEFICIENCY INCOME AND SALES TAX FOR THE TAXABLE YEAR 1986 HAS ALREADY PRESCRIBED; AND

WHETHER OR NOT RESPONDENT IS LIABLE FOR THE DEFICIENCY TAX ASSESSMENT FOR TAXABLE YEAR 1986.

As to the Memorandum[16] filed by respondent, the issues raised are:

WHETHER THE PETITION FOR REVIEW WAS FILED WITHIN THE REGLEMENTARY PERIOD TO APPEAL;

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[10] *Id.*, pp. 115-131.
[11] *Id.*, pp. 133-134.
[12] *Id.*, pp. 148-182.
[13] *Id.*, pp. 139, 184.
[14] *Id.*, p. 186.
[15] *Id.*, pp. 12-13.
[16] *Id.*, pp. 153-154.

WHETHER RESPONDENT COMPLIED WITH ALL THE REQUIREMENTS TO AVAIL ITSELF OF TAX AMNESTY UNDER RA NO. 9480;

WHETHER RESPONDENT IS AMONG THE ENTITIES DISQUALIFIED TO AVAIL ITSELF OF TAX AMNESTY UNDER RA NO. 9480;

WHETHER RESPONDENT IS IMMUNE FROM PAYMENT OF DEFICIENCY INCOME AND SALES TAXES FOR THE YEAR 1986 AMOUNTING TO PHP146,721,010.90, PURSUANT TO RA NO. 7480;

WHETHER RESPONDENT IS LIABLE FOR DEFICIENCY INCOME AND SALES TAX FOR THE YEAR 1986, AMOUNTING TO PHP146,721,010.90;

WHETHER ASSESSMENT NOTICE NOS. FAS-2-86-93-005023 AND FAS-5-86-93-005024 DATED NOVEMBER 24, 1993 WERE ISSUED AGAINST RESPONDENT WITHIN THE PERIOD PRESCRIBED BY LAW;

WHETHER RESPONDENT IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE WAIVERS OF THE STATUTE OF LIMITATIONS; AND

WHETHER THE DEFICIENCY TAX ASSESSMENTS ARE VOID FOR FAILING TO INDICATE THE FACTS AND LAW ON WHICH THEY ARE BASED; AND CONSEQUENTLY, WHETHER SAID VOID ASSESSMENTS COULD HAVE BECOME FINAL, EXECUTORY AND UNAPPEALABLE.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review.

In the Decision[17] dated May 21, 2014, the Second Division unanimously ruled as follows:

> The foregoing issues boil down to one major issue, *viz[.]*, "Whether or not [respondent] is liable to pay the aggregate amount of [Php]146,721,010.90, inclusive of interest, representing deficiency income and sales taxes for taxable year 1986[,"] With that, [the Second Division] deems it best to first discuss the propriety of the assessment issued against [respondent].
>
> [Respondent] maintains that the three (3) year period mandated by law within which [petitioner] could validly assess [respondent] for deficiency income and sales taxes has already prescribed. The reason being is that the waivers of the defense of prescription it executed with [petitioner] are invalid due to certain defects, specifically the lack of signature and date of acceptance by [petitioner] or her duly authorized representatives.
>
> On the other hand, [petitioner] believes otherwise. She posits that since execution of the waivers are beneficial to taxpayers for it provides enough time to gather voluminous documents for the conduct of audit by [petitioner], it is quite unfair that in cases where an adverse FAN is issued against said taxpayer[,] the very same waiver utilized for its advantage will now be used to question the validity of said waivers.
>
> [Petitioner] further alleges that [respondent's] failure to challenge the legality of the waivers in its administrative protest operates as an estoppel on its part to challenge the same, and by its act of applying for compromise for its deficiency sales tax under RMO [No.] 54-93 is tantamount to acknowledging the validity of [petitioner's] assessments.
>
> After a careful and thorough evaluation, [the Second Division] finds for [respondent].
>
> Section 203 of the [1997 NIRC] requires that [petitioner] must make an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the three year prescriptive period shall not be valid save only in certain cases under Section 222 of the [1997 NIRC], as amended, to wit:

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[17] *Records*, pp. 553-559.

"**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.

xxx xxx xxx."

"**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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of

> the five (5) - year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) *Provided, however,* That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." [Underscoring supplied]

As can be gleaned above, the regular three [(3)]-year prescriptive period can be extended. One of which is upon a written agreement between the tax authorities and taxpayer through the execution of a waiver of defense of prescription.

In line with this, RMO No. 20-90 dated April 4, 1990 as amended by Revenue Delegation Authority Order ("RDAO") No. 05-01 dated August 2, 2001, was issued which provided the procedures that should be followed for the proper execution of the waiver. The relevant provisions of RMO No. 20-90 read thus:

> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after 19_" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

> 3. xxx xxx xxx
>
> 4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.
>
> 5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with.

However, since RDAO No. 05-01 took effect only on August 2, 2001 and the waivers of the defense of prescription in the instant case were executed on August 30, 1989, August 21, 1990, June 6, 1991, and February 17, 1993, respectively, said RDAO is not yet applicable.

Thus, in accordance with the clarification made by the CIR, Kim S. Jacinto-Henares, in RMC No. 29-2012 dated June 29, 2012, the waiver form to be used shall be what is provided under RMO No. 20-90 and not RDAO No. 05-01.

In the instant case, the following were noted in the waivers executed by [respondent], to wit:

> (1) There is a deviation from the form of the waiver prescribed under RMO No. 20-90. Sec. 1 of said RMO provides as follows:
>
> > "1. The waiver must be in the form identified as Annex 'A' hereof. This form may be reproduced by the Office concerned <u>but there should be no deviation from such [form]</u>". (Underscoring supplied)
>
> The waivers did not state the amount of assessed taxes as required under the prescribed form.
>
> (2) The waivers failed to comply with the requirement that the CIR or duly authorized revenue officer shall sign the waiver to indicate his/her agreement and acceptance of the waiver and the date of such acceptance.

Clearly, the waivers executed by [respondent] were defective and, therefore, no valid agreement between petitioner and respondent can be construed to have taken place. A waiver is not a unilateral act by the taxpayer or the BIR but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer.

A perusal of the August 30, 1989, August 21, 1990, June 6, 1991, and February 17, 1993 waivers show that only the August 30, 1989 waiver is deemed acceptable because at that time[,] strict compliance with the form and execution of waivers are not yet mandatory. It was only on April 4, 1990 when RMO 20-90 was issued that strict compliance with the prescribed form of waiver is required. Nonetheless, the subsequent August 21, 1990, June 6, 1991 and February 17, 1993 waivers are invalid for failing to comply with the form and procedures laid down in the said RMO.

Based on the August 30, 1989 waiver, [petitioner] has until September 30, 1990 within which to assess [respondent]. However, it was only on November 24, 1993 when [petitioner] issued Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-00502461 to [respondent]. In other words, [petitioner's] assessments are fifty-five (55) days overdue.

As pronounced in the case of *Commissioner of Internal Revenue [v.] FMF Development Corporation*, the Supreme Court held that:

> "Under Section 203 of the [1997] NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. <u>Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.</u>" [Underscoring supplied]

With regard to [petitioner's] claim of estoppel against [respondent], the Supreme Court discussed that the doctrine of estoppel is something which should not be used to accomplish a wrong or secure an undue advantage. It held in the case of

Commissioner of Internal Revenue [v.] Kudos Metal Corporation that

> "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 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." [Citations omitted and underscoring supplied]

The mere act of applying for compromise does not necessarily equate to abandonment of any claim for validity of the assessments and waivers. It is the act of immediately paying the tax assessment covered by the waivers of the statute of limitations that renders the taxpayer estopped from questioning the validity of said waivers. As correctly pointed out by [respondent], it has not paid any portion of the assessed taxes and it did not receive any benefit from its offer of compromise to warrant estoppel on its part since the approval thereof was subsequently withdrawn by [petitioner].

Hence, due to the defect in the August 21, 1990, June 6, 1991, and February 17, 1993 waivers, the period to assess the

> tax was not further extended. Consequently, the Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 dated November 24, 1993 and Final Decision dated July 20, 2010 bear no effect since it was issued beyond the three [(3)]-year prescriptive period provided for by law.
>
> Having thus concluded, this Court finds it unnecessary to determine the merit of the other issues raised in the petition in view of the finding that [petitioner's] right to assess [respondent] for deficiency income and sales taxes for the taxable year 1986 has already prescribed.

After a careful consideration of the factual circumstances of the case, the Court *En Banc* partially agrees with the Second Division's ruling.

By way of overview, it must be noted that *Presidential Decree ("PD") No. 1158 ("1977 NIRC")* dated and generally effective on June 3, 1977, was amended by *Batas Pambansa Blg. 700* dated April 5, 1984. The *1977 NIRC* was further amended by *RA No. 8424 ("1997 NIRC")* which was signed on December 11, 1997 and became effective on January 1, 2008. The subject waivers were entered into on August 30, 1989, August 21, 1990, June 6, 1991, and February 17, 1993. Hence, the applicable law and rules are *Sections 203, and 223 of the 1977 NIRC,* and *Revenue Memorandum Order ("RMO") No. 20-90* effective and dated April 4, 1990 (for the 1990, 1991 and 1993 waivers), *viz.*:

> **1977 NATIONAL INTERNAL REVENUE CODE**
>
> TITLE VIII
> Remedies
>
> CHAPTER I
> Period of Limitation in General and Compromise
>
> xxx xxx xxx
>
> SECTION 203. *Period of limitation upon assessment and collection.* — Except as provided in the succeeding section, <u>internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, <u>That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be</u>

counted from the day the return was filed. For the 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.

xxx xxx xxx

CHAPTER II
Civil Remedies for Collection of Taxes

xxx xxx xxx

SECTION 223. *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 begun without assessment, at any time within ten 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 city or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in the preceding section 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

April 4, 1990

REVENUE MEMORANDUM ORDER NO. 20-90

SUBJECT	:	*Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code*
TO	:	*All Internal Revenue Officers and Others Concerned*

Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. 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:
>
> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after ______ 19 ___" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> xxx xxx xxx
>
> This Revenue Memorandum Order shall take effect immediately.
>
> **(SGD.) JOSE U. ONG**
> *Commissioner of Internal Revenue*

Section 203 of the 1977 NIRC, as amended, mandates that the CIR should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3)-year prescriptive period shall not be valid. Additionally, *Section 223(b) of the 1977 NIRC* provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer, before the expiration of the three (3)-year period. The above *RMO No. 20-90* lays down the procedure for the proper execution of the waiver.

Looking into the waivers presented, the Court *En Banc* finds the following:

	1st Waiver	2nd Waiver	3rd Waiver	4th Waiver
Exhibit	"Q"[18]	"Q-1"[19]	"QQ"[20]	"Q-3"[21]
Representative and date of signing				
DOLE	Hernane D. Chua (Assistant Treasurer) August 30, 1989	Hernane D. Chua (Assistant Treasurer) August 21, 1990	Hernane D. Chua (Assistant Treasurer) June 6, 1991	Hernane D. Chua (Assistant Treasurer) February 17, 1993
BIR	No signature	No signature	No signature	No signature
Date of Effectivity	August 21, 1990			
Applicable rules and regulations	1977 NIRC	1977 NIRC; RMO No. 20-90	1977 NIRC; RMO No. 20-90	1977 NIRC; RMO No. 20-90
Extension				
Note at the bottom of page	June 30, 1991	September 30, 1990	June 30, 1991	None
Body of waiver "but not after ___"	September 30, 1990	June 30, 1991	March 31, 1993	December 31, 1993

1. The last day of the period of effectivity of the waivers are inconsistent. The body provides one date in the required phrase "but not after ______ 19__" but the note on the bottom of each waiver provides a different date;

2. There's no proof that the DOLE representative and Assistant Treasurer, Hernane D. Chua, was authorized to sign and execute the waivers; and

3. The waivers were never signed by the CIR or any of his BIR representatives, hence, there is no proof that the CIR willfully entered into these waivers. This applies even to the First Waiver since there is a requirement under the *1977 NIRC* that the CIR and the taxpayer must agree in writing.

Due to the defects in all four (4) waivers and pursuant to *RMO No. 02-90* which provides that there must be strict compliance with the procedures stated therein, the period to assess or collect taxes was not extended.

As to whether the period to assess has prescribed, based on the three (3)- year period without any extension brought about by a valid

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[18] *Id., Exhibit* "Q," p. 266; *BIR Records, Exhibit* "1," p. 788.
[19] *Id., Exhibit* "Q-1," p. 267; *BIR Records, Exhibit* "3," p. 789.
[20] *Id., Exhibit* "QQ," p. 268; *BIR Records, Exhibit* "4," p. 790.
[21] *Id., Exhibit* "Q-3," p. 269; *BIR Records, Exhibit* "5," p. 791.

waiver, the Court *En Banc* sees no justifiable error in the Decision of the Second Division, for the reasons to be discussed below.

Based on Assessment Notice[22] Nos. FAS-2-86-93-005023 and FAS-5-86-93-0050247 dated November 24, 1993, the deficiency taxes were computed, as follows:

	BASIC TAX DUE	SURCHARGE	INTEREST	COMPROMISE	TAX CREDITS	TOTAL AMOUNT DUE
INCOME TAX	50,562,398.00	12,640,599.50	83,219,386.80	15,000.00	-	146,437,384.30
SALES TAX	93,963.40	23,490.85	160,172.35	6,000.00	-	283,626.60
TOTALS	**50,656,361.40**	**12,664,090.35**	**83,379,559.15**	**21,000.00**	-	**146,721,010.90**

According to the BIR's attachment to the letter[23] dated May 11, 1993, recommending the assessment, the basic tax amounts were arrived at in the following manner:[24]

Net Income per Return			56,747,140.00
Add:	Grey Pine Expenses	142,463,993.48	
	Housing Subsidy	2,000,000.00	144,463,993.48
Net Income per Investigation			201,211,133.48
Tax Due			70,423,897.00
Less:	Tax Paid		19,861,499.00
Deficiency Tax			**50,562,398.00**
Taxable Sales per Return			62,293,878.00
Add:	Taxable Sales		
	Sales to US Bases and AFPCES per Return	964,636.00	
	Sales to US Bases and AFPCES per Books	494,819.00	469,817.00
Taxable Sales per Investigation			62,763,695.00
Tax Due	62,293,878.00 x 10% or 20%	5,447,599.00	
	469,817.00 x 20%	93,963.40	5,541,562.40
Less: Tax Paid			5,447,599.00
Deficiency Tax			**93,963.40**

Looking into the breakdown of the Sales Taxes, the Court *En Banc* found that respondent was assessed for deficiency Sales Tax based on the difference between the 20% rate and the 10% rate used by respondent in its tax returns, to wit:

QUARTER	TAX TYPE	AFPCES	US BASES
2nd	10% ESSENTIAL ARTICLES; SEC. 201	30,040.00[25]	
3rd	10% ESSENTIAL ARTICLES; SEC. 201	176,277.00[26]	226,207.00
4th	10% ESSENTIAL ARTICLES; SEC. 201	349,129.00[27]	194,811.00

[22] *Id., Exhibit* "R-1," p. 271; *BIR Records, Exhibits* "9," "9-1," pp. 870-871.
[23] *BIR Records, Exhibit* "7," p. 856.
[24] *Id.*, p. 854.
[25] *Id.*, pp. 688, 690.
[26] *Id.*, pp. 682, 684.
[27] *Id.*, pp. 674, 675.

TOTAL	976,464.00[28]

For the Income Tax assessment, *Section 70(b) of the 1977 NIRC*[29] provides that the filing of the Income Tax Return shall be on or before the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. As to the Sales Tax assessment, *Section 126, of the 1977 NIRC*[30] states that excise taxes on domestic products shall be paid by the producer fifteen (15) days before removal from the place of production.

A perusal of the records of the case reveals that respondent's returns for taxable year 1986 were filed on the dates provided below:

TAX RETURNS	EXHIBIT	DATE OF FILING
Income Tax - Annual filing		
Annual Income Tax Return	"Y," BIR Records	April 15, 1987[31]
Excise Tax - Quarterly filing		
2nd Quarter Sales Tax Return	BIR Records	July 21, 1986[32]
3rd Quarter Sales Tax Return	BIR Records	October 20, 1986[33]
4th Quarter Sales Tax Return	BIR Records	January 12, 1987[34]

The table below will help shed light into the reckoning date of the three (3)-year period to assess:

TAX RETURNS	ACTUAL DATE OF FILING	LAST DATE TO FILE RETURN	LAST DAY TO ASSESS
Income Tax - Annual filing			
Annual Income Tax Return	April 15, 1987	April 15, 1987	April 16, 1990[35]
Excise Tax - Quarterly filing			

[28] The Court *En Banc* found a difference of Php11,828.00, compared to the Php964,636.00 found by the BIR.
[29] SECTION 70. xxx (b) *Time of filing the income tax return.* — The corporate quarterly declaration shall be filed within (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.
[30] SECTION 127. *Payment of excise taxes on domestic products.* — (a) Persons liable; time for payment. — Unless otherwise especially allowed, excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production: Provided, That the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 145 and 151 (a) (4), respectively, of this Title shall be paid within 15 days from the date of removal thereof from the place of production. Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.
[31] *Records, Exhibit "Y,"* pp. 296-297; *BIR Records,* pp. 784-786.
[32] *BIR Records,* pp. 685-690.
[33] *Id.,* pp. 676-684.
[34] *Id.,* pp. 669-675.
[35] April 15, 1990 falls on a Sunday, thus, petitioner has until the next working day to issue the assessment.

2nd Quarter Sales Tax Return	July 21, 1986	-[36]	July 21, 1989[37]
3rd Quarter Sales Tax Return	October 20, 1986	-[38]	October 20, 1989[39]
4th Quarter Sales Tax Return	January 12, 1987	-[40]	January 12, 1990[41]

It must be emphasized that Assessment Notice[42] Nos. FAS-2-86-93-005023 and FAS-5-86-93-0050247 dated November 24, 1993, were received by respondent on December 22, 1993.[43]

Since assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer,[44] December 22, 1993 shall be considered as the date of assessment. Looking into the last dates to assess on the table above, petitioner's right to assess all the foregoing taxes have already prescribed.

Considering the foregoing, the Court *En Banc* finds it unnecessary to discuss the other remaining issue for being moot and academic.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on March 21, 2014 and the Resolution promulgated on June 9, 2014 by the Second Division are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[36] Date of transaction cannot be determined from the records.
[37] Last day based on the date of actual filing.
[38] Date of transaction cannot be determined from the records.
[39] Last day based on the date of actual filing.
[40] Date of transaction cannot be determined from the records.
[41] Last day based on the date of actual filing.
[42] *Records, Exhibit* "R-1," p. 271.
[43] *BIR Records,* letters both dated January 15, 1994, pp. 884-887.
[44] *Basilan Estates, Inc. v. Commissioner of Internal Revenue, et. al.,* G.R. No. L-22492, September 5, 1967, 21 SCRA 17.

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution*, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DOLE PHILIPPINES, INC.,
Respondent.

CTA EB NO. 1190
(CTA Case No. 8155)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 04 2016 10:15 a.m.

x --- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

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"),*[1] the Supreme Court held that the doctrine of estoppel may not be applied against a taxpayer, as an exception to the statute of 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")*[2] 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**. 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 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

[1] G.R. No. 178087, May 5, 2010.
[2] G.R. No. L-11527, November 25, 1958.

taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.

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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**, there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments**." (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:

One. In rejecting the application of estoppel against the taxpayer, **the Supreme Court noted in *Kudos* that there was no positive act 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")*[3] 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. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear." (Emphases supplied)

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

[3] G.R. No. 170257, September 7, 2011.

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")*[4] 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)

In the case at bar, respondent performed acts that induced the BIR to defer the issuance of the assessments. Records reveal that to extend the BIR's prescriptive period to assess respondent for deficiency taxes for the year 1986, respondent executed four (4) waivers. As a consequence of the issuance of said waivers, petitioner delayed the issuance of the assessments. The assessment for deficiency income tax and sales tax for the year 1986 were issued on November 24, 1993, within the extended period as provided for in the questioned waivers. **On January 15, 1994, when respondent filed a protest against the assessment and requested for the withdrawal**

[4]G.R. No. 212825, December 7, 2015.

and cancellation of the deficiency income and sales tax assessment for lack of legal and factual basis, respondent did not raise as an issue the invalidity of the waiver and the prescription of petitioner's right to assess respondent for deficiency taxes for the year 1986.

In addition, records show that on the same day that it filed its protest letter, respondent also applied for a compromise settlement on the ground of reasonable doubt as to the validity of the assessment, pursuant to Revenue Memorandum Order (RMO) No. 54-93. **Respondent offered to pay the amount of ₱93,963.40 representing the basic sales tax assessed by petitioner** due to the difficulty in retrieving the supporting documents related to the sales to AFPCES and the US Bases. Clearly, in availing of the compromise settlement, respondent impliedly admitted that the assessments were timely issued on the basis of the waivers it executed precisely to extend the statute of limitations. **Had respondent believed that the waivers were invalid and the period to assess was not extended, it should not have offered to compromise the said assessment.**

Moreover, respondent's subsequent acts contradict its contention that said waivers were invalid. After the cancellation of its compromise settlement on August 14, 1995, respondent filed a reconsideration on June 6, 2003 or after almost eight (8) years later. When petitioner denied its request for reconsideration on October 30, 2003 and issued a Warrant of Distraint and Levy on June 27, 2007, **respondent even sought to avail itself of tax amnesty on March 6, 2008, albeit it appears that the amount paid was not compliant with the mandate of Section 5 of RA No. 9480.** These acts of respondent positively depict an admission that the said waivers are valid. Thus, respondent is estopped from questioning the validity of the said waivers and the issuance of the corresponding assessment within the extended period.

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.

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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)

For all the foregoing, I VOTE to GRANT the present Petition for Review and UPHOLD Assessment Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 issued by the Commissioner of Internal Revenue based on the grounds stated above.

ROMAN G. DEL ROSARIO
Presiding Justice