REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

FIRST PHILIPPINE POWER SYSTEMS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9067

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated:
SEP 09 2019
1:30 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This Petition for Review filed by First Philippine Power Systems, Inc. prays that the deficiency tax assessments issued against it by the Commissioner of Internal Revenue in the total amount of ₱17,236,413.95 for the taxable year 2009, be declared null and void on the ground of prescription and for utter lack of factual and legal bases.

THE PARTIES

Petitioner First Philippine Power Systems, Inc. is a domestic corporation registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise and primarily engaged in the business of supplying dry-type transformers to global manufacturers of uninterrupted power supply devices and to original equipment manufacturers, as well as to domestic, commercial, and industrial establishments.[1]

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket (vol. I), p. 305; Exhibit "P-2".

It holds office at Building 7-B, Lot 6, Block 18, 10th Street, Phase III, Cavite Export Processing Zone, Rosario, Cavite.[2]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR), tasked to, among others, collect all national internal revenue taxes. Respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws related thereto. His principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served summons and other legal processes of this Court.

THE FACTS

On May 28, 2010, petitioner received Letter of Authority[3] (LOA) No. LOA-116-2010-00000057 dated May 14, 2010.[4] The LOA authorizes Revenue Officers Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Henry Manalo and Group Supervisors Erlinda Ulgado and Marlon Cabance of BIR LT Regular Audit Division 1 to examine petitioner's books of accounts and other accounting records for taxable period 2009.

During the conduct of the audit, Mr. Ariel C. Ong executed a series of Waivers of the Defense of Prescription ("Waivers" for brevity) under the Statute of Limitations of the NIRC as follows:[5]

1. On June 25, 2012[6], Mr. Ong executed a Waiver (First Waiver) for the period until June 30, 2013. The First Waiver was accepted by then Officer-in-Charge Assistant Commissioner for Large Taxpayer Services Alfredo V. Misajon on June 26, 2012.

2. On May 8, 2013[7], Mr. Ong executed another Waiver (Second Waiver).

3. On September 19, 2013[8], Mr. Ong executed a subsequent Waiver (Third Waiver) for the period until June 30, 2014. OIC-ACIR Misajon accepted the Third Waiver on September 23, 2013.

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[2] Exhibit "P-1".
[3] Exhibit "P-11"; Exhibit "R-2".
[4] Par. 3, JSFI, docket (vol. 1), p. 306.
[5] Pars. 4, 4.1, 4.2, 4.3 and 4.4, *ibid*, p. 306.
[6] Exhibit "P-12"; Exhibit "R-7".
[7] Exhibit "R-8".
[8] Exhibit "P-13"; Exhibit "R-9".

4. On March 12, 2014[9], Mr. Ong executed a fourth and final waiver (Fourth Waiver) for the period until December 31, 2014.

On May 23, 2014, petitioner received a Preliminary Assessment Notice[10] (PAN) of even date.[11] Subsequently, respondent received petitioner's Reply to the PAN[12] on June 6, 2014.[13]

On June 16, 2014, petitioner received a Formal Letter of Demand with Final Assessment Notice[14] (FLD-FAN) of even date.[15] Subsequently, respondent received petitioner's protest via Request for Reinvestigation[16] on July 15, 2014, and Submission of the Documents[17] in support of the protest on September 12, 2014.[18]

Then, on May 12, 2015, petitioner received a Final Decision on Disputed Assessment[19] (FDDA) dated May 7, 2015.[20] The summary of deficiency taxes in the FDDA for taxable year 2009 is as follows:[21]

Breakdown of Deficiency Tax Assessment in FDDA		
Assessment No.		**Deficiency**
IT-116-LOA-00000057-09-14-736	Income Tax	₱ 8,967,464.35
VT-116-LOA-00000057-09-14-737	Value-added Tax (VAT)	2,141,185.47
WC-116-LOA-00000057-09-14-738	Withholding Tax on Compensation (WC)	3,776,276.62
WE-116-LOA-00000057-09-14-739	Expanded Withholding Tax (EWT)	1,339,106.16
WE-116-LOA-00000057-09-14-741	Final Withholding Tax (FT)	1,479.92
DS-116-LOA-00000057-09-14-742	Documentary Stamp Tax (DST)	810,901.43
MC-116-LOA-00000057-09-14-743	Miscellaneous Taxes	200,000.00
Total Deficiency Assessment		**₱17,236,413.95**

[9] Exhibit "P-14"; Exhibit "R-12".
[10] Exhibit "P-15"; Exhibit "R-11".
[11] Par. 5, JSFI, docket (vol. 1), p. 306.
[12] Exhibit "P-16".
[13] Par. 6, JSFI, docket (vol. 1), p. 306.
[14] Exhibit "P-17"; Exhibit "R-14".
[15] Par. 5, JSFI, docket (vol. 1), p. 306.
[16] Exhibit "P-18".
[17] Exhibit "P-19".
[18] Par. 6, JSFI, docket (vol. 1), p. 306.
[19] Exhibit "P-20"; Exhibit "R-16".
[20] Par. 5, JSFI, docket (vol.1), p. 306.
[21] Par. 7, *ibid*, pp. 306-307.

Hence, on June 11, 2015, petitioner filed the instant Petition for Review[22] with this Court.

On September 1, 2015, respondent filed his Answer[23], interposing the following special and affirmative defenses, *viz.*:

<u>The assessment was made within the prescribed period to assess</u>

4. Petitioner contends that the assessment was made beyond the prescriptive period to assess.

5. However, petitioner in this case executed waivers which extended the period to assess. The execution of said waivers tolled the prescriptive period to assess pursuant to Section 222(b) of the NIRC. Thus:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> x x x
>
> (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.

6. Petitioner next contests that the person who signed the waiver was not authorized to do so.

7. Assuming, although definitely not conceding, that the persons who executed the waiver were not empowered to do so, yet petitioner is estopped from questioning the authority of said persons as it had lead the Revenue Officers who handled the audit to believe that said persons had the authority to bind the petitioner by their acts of representing the petitioner. This is best shown by the fact that these persons were the ones who appeared before the Revenue Officers when petitioner was invited for a conference, and these are the people who transacted with respondent's officers as representing the petitioner. This is again bolstered by the fact that the time the first waiver was executed, petitioner did not contest the extension of the period to assess.

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[22] Docket (vol. 1), pp. 10-50.
[23] *Ibid*, pp. 196-208.

8. This only shows that petitioner had made respondent believe that the person who transacted in its name were persons authorized by petitioner to do so. Clearly, the doctrine of estoppels is applicable.

9. The essence of estoppels and laches is the failure or neglect for an unreasonable and unexplained length of time to do so that which by exercising due diligence could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it although there is no absolute rule as to what constitutes staleness of demand as each case is to be determined according to its particular circumstances.

10. Article 1431 of the Civil Code provides that in order that estoppels may apply to the person, to whom representations have been made and who claims the estoppels in his favor **must have relied or acted on such representations.** Article 1431 states that:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

11. The case of *Kalalo vs. Luz* discussed estoppels in this wise:

> The essential elements of estoppels in pais may be considered in relation to the party sought to be stopped, and in relation to the party invoking the estoppel in his favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppels, the essential elements are (1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the proposition or status of the party claiming the estoppel, to his injury, detriment or prejudice.

12. On the other hand, Section 2(a) of Rule 131 of the Rules of Court, on the burden of proof and presumptions, states as follows:

> SEC. 2 Conclusive presumptions. – The following are instances of conclusive presumptions:
>
> (a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

13. It is now noteworthy to pinpoint petitioner's conduct amounting to false representation or concealment of material facts calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which party subsequently attempts to assert.

14. To be sure, petitioner should not be allowed to question the apparent authority given to their representative when, after benefiting from the execution of the waivers, they now come to this Honorable Court to question the execution of the same.

15. Petitioner next contends that the person who accepted the waivers in behalf of the respondent was a revenue official who is not one of the officers authorized to accept the waivers of the defense of prescription.

16. With regard to petitioner's other contention that as a mere Officer-in-charge, Assistant Commissioner Alfredo Misajon has no authority to accept the said waivers, respondent submits that his office has the powers necessary to accept the said waivers.

17. To hold otherwise would paralyze the operations of the whole Bureau. It would be regressive for the government and for the taxpayers. It would also be highly impractical to expect that the Commissioner of Internal Revenue alone would be the one to review all the applications for the waiver of the prescriptive period. Petitioner's contention must fall on the ground of good governance and efficiency, at least.

<u>Petitioner was afforded due process</u>

18. Petitioner contends that respondent violated its right to due process.

19. This argument requires scant consideration. It is basic that as long as a party is given the opportunity to defend his interest in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.

20. Petitioner cannot deny that it was afforded every bit of due process when it was allowed to file its protest against each of respondent's assessments. The fact that respondent was not convinced with petitioner's position does not mean that the due process clause was violated. To be sure, petitioner's arguments and evidence presented were taken into consideration but ultimately deficiency taxes were still found.

21. The fact that petitioner and respondent were not in agreement with the assessment does not mean that petitioner's right due process was violated. In fact, a close scrutiny of the Final Decision on Disputed Assessment shows that respondent took into consideration the evidence, document, and protests submitted by petitioner, only that petitioner was not able to overcome the findings of the revenue officers who conducted the audit.

22. Petitioner also contends that respondent violated its rights to a speedy disposition of its case. Respondent, however submits that the delay, if any, is not entirely due to the fault of the respondent. The nature of tax assessments requires the active participation of both the BIR and the taxpayer. The former cannot unilaterally assess without the cooperation of the latter. This is best exemplified whenever the Bureau asks for documents from the taxpayer and when it conducts its audit field work with the taxpayers. One also has to take into consideration the fact that the numerous work load by the Bureau in proportion to the number of its personnel.

23. Perhaps the best evidence which shows that due process was not followed by respondent is that in their protests to the assessments, some items were cancelled (i.e. fringe benefit tax in this case). This only shows that respondent very much followed and took in to consideration the evidence presented by petitioner.

Petitioner is liable for deficiency taxes for taxable year 2009

Income Tax

24. Disallowance of Income Tax Holiday (ITH) incentives – Sales to American Power Corporation (APC) /Non-APC subject to 5% preferential rate and regular income tax, ₱162,546,296.29/₱4,131,529.40.

25. Per FLD, the total sale to APC and Non-APC amounting to ₱ 162,546,296.29 and ₱4,131,529.40 was subjected to the 5% preferential rate and 30% regular income tax rate on the ground of non-compliance with the committed volume requirement as a precondition to the ITH qualification which is indicated in the PEZA registration.

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26. In their protest to the FLD, petitioner did not dispute the fact that it did not meet the volume requirements indicated in the original registration, hence it is found liable for deficiency taxes as indicated in the FDDA.

27. Unaccounted income due to unaccounted finished goods inventory, ₱750,340.36.

28. Per the FLD, petitioner has an undeclared income due to the unaccounted finished goods computed by comparing the number of units produced and sold per PEZA report as against the reported inventory balance per Financial Statement, assessed pursuant to Section 32 in relation to Section 27 of the NIRC, as amended.

29. Per its protest to the FLD, petitioner protested the 30% regular income tax rate and that it should be only at 5% preferential rate being PEZA registered entity. However, petitioner failed to substantiate the same that indeed it was sold to APC or to any registered PEZA customers, hence was assessed at regular rate of 30%.

30. Unaccounted source of cash due to undeclared purchases, ₱4,914,986.71.

31. Per FLD, comparison between the purchases and importation per Financial Statements as against the PEZA quarterly reports showed over claimed raw materials. The unaccounted variance was considered as unaccounted source of cash, subject to income tax pursuant to Section 32 of the Tax Code.

Schedule 2 – Unaccounted source of case due to undeclared purchases

Raw materials, end (FS Note #6)			12,969,095.00
Raw materials during the year			108,797,195.00
Total			121,766,290.00
Raw materials, beg.		18,795,159.00	
Purchases			102,971,131.00
Less: Purchases of raw materials subjected per alphalist	35,248,329.78		
Importation	62,807,904.51	98,056,234.29	
Difference – Unaccounted purchases		4,914,896.71	

32. Per protest to the FLD, petitioner stated that it were not provided with the details on how the computation was arrived. On the contrary to said allegation, the discrepancy was discussed during the conduct of the audit and was already part of the assessment per Preliminary Assessment Notice. However, no reconciliation nor

supporting documentary evidence was provided, hence a reiteration of the assessment in the FDDA.

33. Other Income in the amount of ₱1,869,521.00. Per FLD, other income was not subjected to regular income tax, hence was assessed pursuant to Section 32 of the NIRC, as amended.

34. Per FLD protest, you stated that said income includes the following:

1. Interest income subject to final tax	₱ 685,727.00
2. Realized forex gain in 2009	162,862.00
3. Scrap sales	146,660.00
4. Revaluation of asset-leasehold improvement	874,728.96
Total	₱1,869,522.96

35. Interest income subjected to final tax and unrealized gain due to revaluation of asset on leasehold improvement is considered resulting to the reduction of ₱1,560,000.96; a reiteration of the assessment of ₱309,520.04 for failure to substantiate the same.

36. Disallowed Cost of Sales, ₱11,4045,627.77, per petitioner's annual income tax return filed for the year 2009 showed that it fully claimed the Cost of Sales in the amount of the ITH status, petitioner will be subjected to the 5% preferential income tax (5% GIT) as a PEZA registered enterprise and to regular income tax (30% RIT to other income). The corresponding Cost of Sales is therefore subject to attribution pursuant to Section 34(A)(1)(a) of the Tax Code and for the 5% GIT preferential rate subject to conditions of allowance deductions. Hereunder is the list of direct costs which are not considered allowable deductions for purpose of computing 'gross income earned' subject to the 5% GIT in accordance with RR No. 11-2005.

Value-Added Taxes

37. Verification of petitioner's revenues received during the year revealed that there were sales/income in the amount of ₱7,118,984.54 which were not subjected to VAT, hence assessed pursuant to Section 108 of the NIRC.

38. In its protest, portion of the other income which includes interest income subjected to final tax is dropped and cancelled resulting to the reduction of ₱1,560,000.96. The balance thereof amounting to ₱309,520.04 was reiterated in the FDDA for failure to submit supporting documents to reconcile the discrepancy.

Withholding tax on compensation

39. Comparison of salaries and allowances subject to withholding tax per audit against amount subjected to withholding tax on compensation per alphalist showed a discrepancy in the amount of ₱5,486,727.26 and thus assessed pursuant to Section 78, 79 and 80 of the NIRC.

40. Petitioner claims that it does not know how this number was arrived at, but contrary to its allegations this amount was discussed and provided/included in the preliminary assessment notice, but, still petitioner failed to substantiate the same.

Final Tax

41. Dividends declared and paid to stockholders were not subjected to tax.

42. Upon verification during the audit proceedings, it was found that petitioner failed to pay the corresponding final tax due in accordance with Section 24(B)(2) of the NIRC as amended, hence assessed accordingly.

Documentary Stamp Tax

43. Verification disclosed that lease contracts, advances to related parties in the amount of ₱74,887,826.00 reflected per financial statements which petitioner failed to subject to DST, hence assessed pursuant to Section 194 and 179 of the NIRC.

Compromise Penalty

44. Verification disclosed that taxpayer failed to register sales invoices, official receipts, delivery receipts and commercial invoices issued for taxable year 2009, hence was assessed pursuant to Section 264 of the NIRC, as amended in relation to RMO#19-2007.

Thereafter, a Notice of Pre-Trial Conference[24] was issued on September 9, 2015, initially setting the case for pre-trial conference on October 20, 2015. However, as per petitioner's motion[25], it was reset on February 2, 2016. In the meantime, on October 16, 2015, Pre-Trial Brief for the Respondent[26], and Pre-Trial Brief for the Petitioner[27] were both simultaneously filed.

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[24] *Id.*, pp. 212-213.
[25] Motion to Cancel Pre-Trial Conference with Motion to Defer Submission of the Pre-Trial Brief and the Judicial Affidavits of Witnesses filed on October 12, 2015, *id.*, pp. 215-218.
[26] Docket (vol. 1), pp. 220-226.
[27] *Id.*, pp. 227-237.

On February 17, 2016, the parties filed their Joint Stipulation of Facts and Issues[28]. Afterwards, a Pre-Trial Order[29] was issued by this Court on March 31, 2016, deeming the pre-trial terminated and setting the initial presentation of evidence for petitioner on May 2, 2016.

During trial, petitioner presented as witnesses its corporate secretary, Atty. Martin Antonio A. Lacdao[30]; and, its Finance Manager, Ms. Abigael S. Aban[31], who both testified on direct by way of judicial affidavit.

On September 7, 2016, petitioner filed its Formal Offer of Evidence[32], offering Exhibits "P-1" to "P-22", inclusive of sub-markings, as its documentary evidence. Thus, in the Resolution[33] dated November 24, 2016, this Court admitted petitioner's exhibits except for Exhibits "P-4" and "P-5" for not being properly marked. With that, petitioner was deemed to have rested its case.

When called to present his case, respondent offered his lone witness Revenue Officer Felina Guimbao, who also testified on direct by way of judicial affidavit[34].

On April 18, 2018, respondent filed his Formal Offer of Evidence (In compliance with the Resolution dated 22 March 2018)[35], offering Exhibits "R-1" to "R-16" as his documentary evidence. As such, in the Resolution[36] dated July 2, 2018, this Court admitted all of respondent's exhibits.

Thereafter, the parties were given a period of thirty (30) days within which to submit their respective memoranda. In compliance, respondent's Memorandum[37] was filed on August 29, 2018, while petitioner filed its Memorandum[38] on September 4, 2018. Accordingly, in the Resolution[39] dated September 10, 2018, the present case was deemed submitted for decision.

THE ISSUES

The parties submitted the following issues[40] for this Court's disposition, *viz.*:

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28 *Id.*, pp. 305-313.
29 *Id.*, pp. 333-341.
30 Exhibit "P-22"; Judicial Affidavit (Of Martin Antonio A. Lacdao), *id*, pp. 257-263.
31 Exhibit "P-21"; Judicial Affidavit (Of Ms. Abigael S. Aban), id., pp. 347-368.
32 Docket (vol. 2), pp. 570-580.
33 *Ibid*, pp. 817-818.
34 Judicial Affidavit of Revenue Officer Felina Guimbao, *id.*, pp. 822-829.
35 Docket (vol. 2), pp. 932-940.
36 *Ibid*, pp. 946-948.
37 Docket (vol. 3), pp. 971-982.
38 *Ibid*, pp. 983-1025.
39 *Id.*, p. 1027.
40 Issues to be Resolved, JSFI, docket (vol. 1), pp. 307-308.

1. Whether or not respondent's right to assess petitioner for taxable year 2009 has already prescribed;

2. Whether or not this petitioner was afforded due process in the issuance of the disputed deficiency tax assessment;

3. Whether or not petitioner's right to a speedy disposition of its case was violated; and

4. Whether or not petitioner is liable to pay the aggregate amount of ₱17,236,413.95 representing deficiency Income Tax, VAT, Withholding Tax on Compensation, Final Tax, Expanded Withholding Tax, Documentary Stamp Tax, and Compromise Penalty for taxable year 2009, inclusive of penalties and the deficiency interest set forth in Section 248 and 249 of the NIRC.

THE RULING OF THE COURT

Respondent's right to assess petitioner for taxable year 2009 has partially prescribed.

With regard to the first issue, this Court shall discuss the question of prescription of respondent's deficiency assessments in seriatim.

<u>The subject Waivers validly extended the period for assessment considering that the parties are both in pari delicto.</u>

Verily, Section 203 of the NIRC of 1997, as amended, provides for a three-year period within which an assessment may be conducted by the BIR, 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**. *(Emphases supplied)*

Based above, the government is mandated 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. Hence, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.

In the present case, petitioner was assessed for deficiency income tax, VAT, withholding tax on Compensation, FT, and DST for taxable year 2009. Since petitioner only received the FDDA on May 12, 2015, the same was clearly beyond the three-year prescriptive period for assessing petitioner's taxes for taxable year 2009.

Nonetheless, by way of exception, there are certain instances provided under Section 222(b) of the NIRC of 1997, wherein the government may assess pertinent taxes against taxpayers beyond the said three-year prescriptive period, thus:

> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> x x x
>
> (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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> x x x. *(Emphasis Supplied)*

Based on the records of the case, petitioner and respondent executed four (4) waivers covering all internal revenue taxes for taxable year 2009, with the following details:

	Date Executed	**Date Accepted by respondent**	**Date Received by petitioner**	**Period Extended Until**
First Waiver dated June 25, 2012[41]	June 25, 2012	June 26, 2012	*No date indicated but received by petitioner*	June 30, 2013
Second Waiver dated May 8, 2013[42]	May 8, 2013	May 16, 2013	June 6, 2013	December 31, 2013

[41] Exhibit "P-12"; Exhibit "R-7".
[42] Exhibit "R-8".

Third Waiver dated September 19, 2013[43]	September 19, 2013	September 23, 2013	September 26, 2013	June 30, 2014
Fourth Waiver dated March 12, 2014[44]	March 12, 2014	–	–	December 31, 2014

Respondent insists that the prescriptive period was validly extended by virtue of the waivers. Petitioner, on the other hand, argues that the four (4) waivers signed and executed by its President Mr. Ariel Ong are invalid because: 1. Mr. Ong was not authorized to execute and sign the waivers on behalf of petitioner; 2. The absence of the date of acceptance by the respondent on the third and fourth waivers; 3. The accepted copies of the second and fourth waiver was never transmitted by the BIR to the petitioner; and, 4. Then officer-in-charge, Assistant Commissioner Alfredo Misajon has no authority to accept the said waivers.

This Court is not convinced.

Parenthetically, execution of the waivers must strictly abide by the procedures and guidelines provided in Revenue Memorandum Order (RMO) No. 20-90[45] and Revenue Delegation Authority Order (RDAO) No. 05-01[46], otherwise the waiver is considered invalid and will not extend the period of assessment. This was the ruling enunciated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[47], to wit:

> "Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

[43] Exhibit "P-13"; Exhibit "R-9".
[44] Exhibit "P-14"; Exhibit "R-12".
[45] Proper Execution Of The Waiver Of The Statute Of Limitations Under The National Internal Revenue Code, dated April 4, 1990.
[46] Delegation of Authority to Issue and Sign Certificate of Exemption for Audit/Investigation for Availments of the No Audit Program as Implemented by Revenue Regulations No. 6-2005, as Amended, dated January 18, 2006.
[47] G.R. No. 178087, May 5, 2010, citing, *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. **In the case of a corporation, the waiver must be signed by any of its responsible officials.** In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. **However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.**

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

x x x

Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void." *(Emphases Supplied)*

Then, on April 4, 2016, the BIR issued RMO No. 14-16[48] which effectively repealed the very strict requirements for a valid waiver prescribed in RMO No. 20-90 and RDAO No. 05-01, and instead prescribed a revised guidelines on the execution of waivers. The changes are significant in that they effectively relax the requirements in executing waivers by the parties concerned.

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[48] Guidelines For The Execution Of Waivers From The Defense Of Prescription Pursuant To Section 222 Of The National Internal Revenue Code Of 1997, as Amended.

However, considering that the subject waivers were executed prior to the issuance of RMO No. 14-16, the governing BIR issuances in force at that time shall be observed.

As such, in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc.)*,[49] the Supreme Court had the opportunity to rule that a waiver must faithfully comply with the provisions of RMO No. 20-90 and RDAO 05-01 in order to be valid and binding. Nonetheless, an exception must be made when the circumstances warrant, in keeping with the lifeblood theory of taxation, the High Court explains, to wit:

> "To be sure, both parties in this case are at fault.
>
> Here, respondent, through Sarmiento, executed five Waivers in favor of petitioner. <u>However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials 13 and RDAO 01-05(*sic*) which requires the presentation of a written and notarized authority to the BIR.</u>
>
> <u>Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers</u>. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue official **to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative** before affixing his signature to signify acceptance of the same. It also instructs that **in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized.** Furthermore, it mandates that **the waiver should not be accepted by the concerned BIR office and official unless duly notarized.**
>
> Vis-a-vis the five Waivers it received from respondent, <u>the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented</u>, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.
>
> <u>Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities</u>. In fact, in

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

its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

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

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

<u>The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid</u>. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. <u>Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein</u>. <u>It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers</u>. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers while it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

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 (*sic*), it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

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

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

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

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same

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

In the instant case, both parties are *in pari delicto.*

Petitioner states that there was no Board Resolution authorizing its President, Mr. Ong to sign the four (4) waivers on its behalf. Clearly, petitioner violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials, and RDAO No. 05-01 which requires the presentation of a written and notarized authority to the BIR.

More so, petitioner, in its Reply to PAN[50] dated June 6, 2014, did not even question the validity of the subject waivers. It was only on July 15, 2014, when petitioner filed its Request for Reinvestigation to the Formal Letter of Demand and Final Assessment Notices that it initially questioned the validity of the Second, Third and Fourth Waivers. It was only then that petitioner raised the issue that respondent did not allegedly provide them with a copy of the Second Waiver, and that the Second and Third Waiver do not bear any proof of the date of receipt.

Also, petitioner never raised the issue of the authority of Mr. Ong to sign the four Waivers during the administrative proceedings before the BIR, it merely raised the said argument on its appeal to this Court. Thus, this Court finds petitioner in bad faith when it impugns the authority of its own signatory after it has benefited from the extended period of assessments. It must be remembered that by virtue of these waivers, petitioner was given an opportunity to gather and submit documents to substantiate its claims before the BIR, to postpone the payment of taxes, and, to contest and negotiate the assessment against it.

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[50] Exhibit "P-16".

On the other hand, respondent defied its own rules and was remiss in performing its functions with respect to these waivers. Under RDAO No. 05-01, it is the duty of the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized.[51] In this case, the BIR failed three (3) times in performing its duties.

Accordingly, even though the parties were both aware of the infirmities of the subject waivers, they still continued their dealings with each other on the strength of these waivers.

Clearly, Next Mobile case is applicable to the present case since both parties in this case are *in pari delicto* or in equal fault. Thus, petitioner is estopped from raising any objection against the validity of the said waivers. However, while the first, second and third waiver validly extends the period for assessment, the fourth waiver is invalid because it was not accepted by the respondent.

The period of assessment for Withholding Tax on Compensation and Final Tax for the period of January to May 2009 had already prescribed even before the execution and acceptance of the First Waiver.

Again, Section 222(b) of the NIRC of 1997, as amended, provides that the three-year prescriptive period may be extended, if before the expiration of the time prescribed in Section 203 for the assessment of the tax, both petitioner and the taxpayer have validly agreed in writing to extend the assessment.

For ease of reference, the various dates of petitioner's filling its tax returns and the corresponding prescriptive periods for the assessed taxes for taxable year 2009 are presented below as follows:

2009 Income Tax Return[52]

BIR Form	Period Covered	Date of Filling	Last day to assess	First Waiver executed on June 25, 2012
1702	Annual ITR	April 15, 2010	April 15, 2013	–

[51] *First Philippine Electric Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 9199, February 8, 2019.
[52] Exhibit "P-6".

	for 2009			

2009 VAT Quarterly Returns[53]

BIR Form	Period Covered	Date of Filling	Last day to assess	First Waiver executed on June 25, 2012
2550Q	1st Quarter of 2009	November 6, 2009	November 6, 2012	–
2550Q	2nd Quarter of 2009	November 6, 2009	November 6, 2012	–
2550Q	3rd Quarter of 2009	October 20, 2009	October 25, 2012	–
2550Q	4th Quarter of 2009	January 20, 2010	January 25, 2013	–

2009 Withholding Tax on Compensation Returns[54]

BIR Form	Period Covered	Date of Filling	Last day to assess	First Waiver executed on June 25, 2012
1601C	January 2009	February 10, 2009	February 10, 2012	PRESCRIBED
1601C	February 2009	March 10, 2009	March 10, 2012	PRESCRIBED
1601C	March 2009	April 13, 2009	April 13, 2012	PRESCRIBED
1601C	April 2009	May 11, 2009	May 11, 2012	PRESCRIBED
1601C	May 2009	June 10, 2009	June 10, 2012	PRESCRIBED
1601C	June 2009	July 10, 2009	July 10, 2012	–
1601C	July 2009	August 10, 2009	August 10, 2012	–
1601C	August 2009	September 10, 2009	September 10, 2012	–
1601C	September 2009	October 12, 2009	October 12, 2012	–
1601C	October 2009	November 10, 2009	November 10, 2012	–
1601C	November 2009	December 10, 2009	December 10, 2012	–
1601C	December 2009	January 12, 2010	January 15, 2013	–

2009 Expanded Withholding Tax Returns[55]

BIR Form	Period Covered	Date of Filling	Last day to assess	First Waiver executed on

[53] Exhibits "P-7" to "P-7-C".
[54] Exhibits "P-8" to "P-8-K".
[55] Exhibits "P-9" to "P-9-K".

				June 25, 2012
1601E	January 2009	February 10, 2009	February 10, 2012	PRESCRIBED
1601E	February 2009	March 10, 2009	March 10, 2012	PRESCRIBED
1601E	March 2009	April 13, 2009	April 13, 2012	PRESCRIBED
1601E	April 2009	May 11, 2009	May 11, 2012	PRESCRIBED
1601E	May 2009	June 10, 2009	June 10, 2012	PRESCRIBED
1601E	June 2009	July 10, 2009	July 10, 2012	–
1601E	July 2009	August 10, 2009	August 10, 2012	–
1601E	August 2009	September 10, 2009	September 10, 2012	–
1601E	September 2009	October 12, 2009	October 12, 2012	–
1601E	October 2009	November 10, 2009	November 10, 2012	–
1601E	November 2009	December 10, 2009	December 10, 2012	–
1601E	December 2009	January 15, 2010	January 15, 2013	–

From the foregoing table, Withholding Tax on Compensation and Final Tax for the period of January to May 2009, have already prescribed even prior to the execution and acceptance of the First Waiver. Hence, only the assessments for deficiency income tax, VAT, Withholding Tax on Compensation (for the period of June to December) and Final Tax (for the period of July to December) may be assessed by respondent.

The Petition for Review was timely filed.

Having considered the scope of respondent's deficiency tax assessments against petitioner this Court shall now determine the timeliness of filling the instant Petition for Review.

Section 228 of the NIRC of 1997, as amended, provides the period within which to elevate to this Court the denial or inaction of respondent of a taxpayer's administrative protest, *viz.*:

> **SEC. 228.** *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> x x x

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Based on the records of the case, petitioner received the FDDA on May 12, 2015. Counting thirty (30) days therefrom, petitioner had until June 11, 2015 within which to file its appeal to the CTA. Thus, the petition for review filed on June 11, 2015 was timely filed.

Petitioner's right to due process was violated in the issuance of the disputed deficiency tax assessment.

The assessment for deficiency taxes for TY 2009 is void for lack of valid LOA.

Petitioner argues that the LOA is void for failure to comply with the requirements set out under the RMO No. 69-10[56]. According to petitioner all manual LOA issued from March 1, 2010 to July 1, 2010 were to be replaced with electronic LOA (eLOAs) and that tax audit were to be allowed only when the eLOA is duly served to the taxpayer. Furthermore, petitioner contends that the respondent violated the taxpayer's Bill of Rights by extending the audit more than one twenty (120) days without the due validation of the LOA.

At the outset, there is nothing in Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals that limits the power of this Court to resolve only issues that are duly raised by the parties. In fact, the rule permits this Court to resolve not only the issues brought forth by the parties, but also those related or interwoven with the issues raised and even those are necessary to pass upon in order to achieve an orderly disposition of the case before it, thus:

> **SECTION 1**. Rendition of judgment. – x x x In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Under Section 6(A) of the NIRC of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with respondent CIR, thus:

[56] Guidelines On The Issuance of Electronic Letters of Authority, Tax Verification Notices, And Memoranda Of Assignment, dated August 11, 2010.

> **SECTION 6.** *Power of Make Assessments and Requirements for Tax 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. x x x.

More so, the said power may be delegated in accordance with Section 7, in relation to Sections 10 and 13 of the same Tax Code, to wit:

> **SEC 7.** *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: x x x.
>
> **SEC. 10.** *Revenue Regional Director.* – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> x x x
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region;
>
> **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.

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Apparently, while the power to make assessments is primarily lodged with respondent, the power to issue LOA in relation thereto may be expressly delegated to the Revenue Regional Director.[57]

May the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the Revenue Officer named in the LOA?

Article 1892 of the Civil Code states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing** so; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[58]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to Revenue Officers (ROs) Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Henry Manalo and Group Supervisor (GS)-Erlinda Ulgado and Marlon Cabance who were originally named in the LOA and RO Rogelio Gonzales and GS-Marivic Bautista who were named in the first Memorandum of Assignment, may be revoked, transferred and reassigned to ROs Felina Guimbao and GS-Olivia Aviles for continuance of audit.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[59] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[60]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary

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[57] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8952, November 14, 2018.

[58] *Emphasis supplied.*

[59] SEC. 13. Authority of a Revenue Officers. - 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).*

[60] Civil Code of the Philippines, Article 1869.

consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[61] The title of the contract does not necessarily determine its true nature.[62] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[63] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[64]

Mr. Joel L. Tan-Torres, then CIR, issued LOA No. 116-2010-00000057[65] dated May 14, 2010, authorizing RO-Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Henry Manalo and GS-Erlinda Ulgado and Marlon Cabance to examine the petitioner's books of accounts and other accounting records for internal revenue taxes for TY 2009. It was later re-assigned to RO- Rogelio Gonzales and GS-Marivic Bautista pursuant to Memorandum of Assignment (MOA) No. LOA-116-2011-428[66] issued on June 28, 2011 by Mr. Edralin Silario, OIC-Chief, LT Regular Audit Division 1. Then, on February 13, 2013, Mr. Cesar Escalada, LT Regular Audit Division 1, issued MOA No. LOA-116-2013-0224[67] to authorize RO-Felina Guimbao and GS-Olivia Aviles to continue the audit/investigation and to cancel the previously issued MOA No. LOA-116-2011-428 issued to ROs

/r

61 Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

62 Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

63 Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

64 Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

65 Exhibit "P-11"; Exhibit "R-2".

66 Exhibit "R-6".

67 Exhibit "R-1".

Gonzales and Bautista. Thereafter, Mr. Escalada, Chief, RLTAD 1 authorized RO-Josa Gomez to assist RO Guimbao through a letter[68] dated July 8, 2013.

Clearly, as per the LOA No. 116-2010-00000057 dated May 14, 2010, ROs Guimbao and Gomez were not among those revenue officers originally authorized to audit/examine petitioner's books of account and other accounting records for taxable year 2009. In fact, the records reveal that the authority of ROs Guimbao and Gomez to examine petitioner for possible deficiency taxes pertaining to taxable year 2009 only emanated from MOA No. LOA-116-2013-0224 issued on February 13, 2013 and letter dated July 8, 2013.

ROs Felina Guimbao, Josa Gomez and GS-Olivia Aviles who conducted the examination of petitioner's records may be deemed authorized to do so without need for a new LOA, **only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service**.

Under RMO No. 29-07[69], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant</u> <u>Commissioner/Head</u> <u>Revenue</u> <u>Executive</u> <u>Assistants</u>**."[70]

In the instant case however, said Memorandum[71] was only signed by Mr. Cesar Escalada, Chief, Regular LT Audit Division 1. Therefore, ROs Guimbao and Gomez, and GS-Olivia Aviles acted without authority when they performed the audit of petitioner and, subsequently, recommended the issuance of the assailed assessment.

[68] Exhibit "R-9".
[69] Issued September 26, 2007.
[70] *Emphasis and underscoring supplied.*
[71] Exhibit "1".

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive – it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[72]

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,*[73] the Supreme Court held that there must be a grant of authority before any revenue officer can conduct an examination or assessment and that the said authorized revenue officer must not go beyond the authority granted. In the absence of such an authority, the assessment or examination is a complete nullity.

In view of the foregoing discussions, the Court deems it unnecessary to discuss the other issues raised by petitioner.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Final Letter of Demand and Final Assessment Notice for deficiency income tax, value-added tax, expanded withholding tax, final tax, documentary stamp tax and miscellaneous taxes, inclusive of interest, surcharge and penalties for the taxable year (TY) 2009, in the total amount of ₱17,236,413.95 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Ma. Belen S. -

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[72] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8952, March 6, 2019.

[73] G.R. No. 178697, November 17, 2010.

ATTESTATION

I attest 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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairperson's Attestation, is it hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice