REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SABRE TRAVEL NETWORK (PHILIPPINES), INC., (FORMERLY ABACUS DISTRIBUTION SYSTEMS PHILIPPINES, INC.),
Respondent.

CTA EB NO. 2310
(CTA Case No. 9532)

Present:

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

Promulgated: MAR 14 2022 4:30 pm

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DECISION

BACORRO-VILLENA, J.:

Assailing the First Division's Decision dated 25 October 2019[1] (**assailed Decision**) and Resolution dated 26 June 2020[2] (**assailed Resolution**) in CTA Case No. 9532 entitled *Sabre Travel Network (Philippines), Inc. (Formerly Abacus Distribution Systems Philippines,*

[1] Division Docket, Volume III, pp. 1467-1496; Penned by Associate Justice Catherine T. Manahan, with Associate Justice Esperanza R. Fabon-Victorino (Ret.), concurring and Presiding Justice Roman G. Del Rosario, concurring and dissenting.

[2] Id., pp. 1548-1555.

Inc.) v. Commissioner of Internal Revenue, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the instant Petition for Review[3] pursuant to Section 3(b)[4], Rule 8, in relation to Section 2(a)(1)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

PARTIES OF THE CASE

Petitioner is the duly appointed CIR who is vested, among others, with authority to administer and enforce national internal revenue laws.[7]

Respondent Sabre Travel Network (Philippines), Inc. (**respondent/Sabre**) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 3F Trafalgar Plaza Building, H.V. Dela Costa Street, Salcedo Village, Makati City 1227 NCR Philippines.[8] It is a domestic corporation engaged in the business of providing a global distribution system that allows automated transactions between vendors and booking agents (customarily travel agents) in order to provide travel-related services such as airline reservations, hotel reservations, car rentals, and the like to end-customers. Pursuant to its [Amended] Articles of Incorporation[9] (**AOI**), its primary purpose is to engage in the promotion, development, operation, marketing and selling on job order of computerized reservation systems, techniques, equipment

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3 Filed on 23 July 2020, *Rollo*, pp. 1-25.

4 **SEC. 3.** *Who may appeal; period to file petition.*

...

(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.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

...

6 A.M. No. 05-11-07-CTA.

7 Paragraph 3, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 752.

8 Paragraph 1, id., p. 751.

9 Exhibit "P-1", id., pp. 800-809.

leasing, maintenance, training and computer software for travel services distribution and other related services. It is duly registered with the Bureau of Internal Revenue (**BIR**) under Revenue District Office (**RDO**) No. 50 with Tax Identification Number (**TIN**) 000-103-491-000.[10]

On 13 September 2016, the Securities and Exchange Commission (**SEC**) approved the change in petitioner's corporate name from Abacus Distributions Systems Philippines, Inc. to its current name.[11]

FACTS OF THE CASE

On 26 August 2011, respondent received Letter of Authority[12] (**LOA**) No. LOA-050-2011-00000294 from the BIR authorizing the examination of its books of accounts and other financial records for the year ending 31 December 2010 (**CY 2010**). In the said LOA, Revenue Officers (**ROs**) Jose Eric Almosara (**Almosara**) and Joseph Casquejo (**Casquejo**) of RDO No. 50 – South Makati were authorized to examine the books of accounts and other accounting records of respondent for the covered taxable period.[13]

On 28 August 2013, respondent, through its President, Demetrio C. Silverio (**Silverio**), executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (**first [1st] waiver**), agreeing to extend the period of prescription until 28 February 2014. Petitioner, through Revenue District Officer Maridur V. [Rosario][14] (**RDO Rosario**), accepted the same on 31 October 2013.

On 07 February 2014, respondent, still through Silverio, executed the second waiver[15] (**2nd waiver**) agreeing to further extend the period of prescription until 31 December 2014. On the same day, petitioner, still through RDO Rosario, accepted the same.

10 Paragraph 2, id., pp. 751-752.
11 Supra at note 9.
12 Exhibit "P-3", Division Docket, Volume II, p. 858.
13 Paragraph 5, JSFI, id., p. 752.
14 Spelled as Sosario.
15 Exhibit "P-5", Division Docket, Volume II, p. 860.

Later, respondent received a Preliminary Assessment Notice (**PAN**) dated 26 November 2014[16] signed by Regional Director Jonas DP. Amora (**RD Amora**) for alleged deficiency Income Tax (**IT**), Value-Added Tax (**VAT**), Expanded Withholding Tax (**EWT**), Final Withholding Tax (**FWT**), Final Withholding VAT (**WVAT**) and Documentary Stamp Tax (**DST**) for CY 2010.[17]

Within the fifteen (15)-day period, respondent filed a reply to the PAN in the form a letter dated 08 December 2014[18] which the BIR received on 12 December 2014.[19]

On 23 December 2014, respondent received the Formal Letter of Demand[20] (**FLD**) with Details of Discrepancies dated 23 December 2014[21], finding respondent liable for deficiency IT, VAT, EWT, WTC, FWT, WVAT and DST for a total amount of ₱55,930,553.25.[22]

Respondent protested the FLD through a letter[23] dated 21 January 2015.[24]

Still later, respondent received the Final Decision on Disputed Assessment (**FDDA**) dated 20 December 2016[25] finding it liable for deficiency IT, VAT, WTC, EWT and DST with a reduced amount of ₱45,856,059.61.[26] Notably, the assessment for deficiency FWT and WVAT were deleted.

Petitioner, in his FDDA, stated that the FDDA is his final decision on the matter and that if respondent disagrees, it may appeal the final decision with this Court within thirty (30) days from receipt thereof.[27]

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16 Exhibit "P-6", id., pp. 861-866.
17 Paragraph 6, JSFI, id., p. 752.
18 Exhibit "P-7", id., pp. 867-877.
19 Paragraph 7, JSFI, id., pp. 752-753.
20 Denominated as Formal Assessment Notice (FAN).
21 Exhibit "P-8", Division Docket, Volume II, pp. 878-883.
22 Paragraph 8, JSFI, id., p. 753.
23 Exhibit "P-9", id., pp. 884-894.
24 Paragraph 9, JSFI, id., p. 753.
25 Exhibit "P-10", id., pp. 898-903.
26 Paragraph 10, JSFI, id., p. 753.
27 Paragraph 11, JSFI, id., 754.

PROCEEDINGS BEFORE THE FIRST DIVISION

Accordingly, respondent filed a Petition for Review[28] with this Court on 02 February 2017.[29]

The Petition for Review was filed pursuant to Section 228[30] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, to appeal the FDDA on duly protested assessments for CY 2010 issued against respondent for an aggregate amount of ₱45,856,059.61 which represents alleged deficiency IT, VAT, WTC, EWT and DST.[31]

On 17 March 2017, respondent paid 100% of the deficiency assessment for EWT as reflected in the Amended AN No. W.E. ELA52055-10-16-1256 dated 20 December 2016[32] in the amount of ₱1,042,579.35, inclusive of interest computed from 16 January 2011 until 17 March 2017.[33] Respondent then informed the BIR that notwithstanding the legal issues raised in its Petition for Review, it paid under protest the said assessment pursuant to Section 2.58.5[34] of Revenue Regulations (**RR**) No. 2-98[35], as amended[36], in order to allow the deduction of the disallowed expenses due to non-withholding.[37]

On 30 March 2017, respondent filed an Amended Petition for Review[38], which was admitted by the First Division in a Resolution[39]

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28 Id., Volume I, pp. 10-41.
29 Paragraph 12, JSFI, id., Volume II, p. 754.
30 **SEC. 228.** *Protesting of Assessment.* - ...
31 Paragraph 4, JSFI, Division Docket, Volume II, p. 752.
32 Id., p. 897.
33 Exhibit "P-14", id., p. 933.
34 **Sec. 2.58.5.** *Requirements for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
No deduction will also be allowed notwithstanding payments of withholding tax at the time of the audit investigation or reinvestigation/reconsideration in cases where no withholding of tax was made in accordance with Secs. 57 and 58 of the Code.
35 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.
36 As amended by RR No. 12-2013 but prior to RR No. 6-2018.
37 Exhibit "P-15", Division Docket, Volume II, pp. 934-935.
38 Id., Volume I, pp. 210-248.
39 Id., pp. 391-392.

dated 12 April 2017.[40] The Amended Petition for Review additionally prayed for the refund of the amount paid under protest.

On 29 March 2017, petitioner filed his Answer[41] which the Court received on 17 April 2017. In compliance with the directive of the First Division[42], petitioner likewise filed his Answer (To the Amended Petition for Review)[43] on 02 May 2017.

In both his Answers, petitioner claims that: (1) contrary to respondent's insistence that the PAN was received on 04 December 2014, it was in fact received on 28 November 2014; (2) contrary to respondent's claim that the BIR received its protest on 22 December 2015, the same was in fact received on 22 January 2015; (3) the ROs who conducted the original investigation are those named in the LOA; (4) the 1st and 2nd waivers are valid; and, (5) taxes are important because it is the lifeblood of the government.

Subsequently, the parties filed their Joint Stipulation of Facts and Issues[44] (**JSFI**) and thereafter, the First Division issued the Pre-Trial Order on 26 September 2017.[45]

After the trial, the First Division promulgated the assailed Decision.[46] The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the Amended Petition for Review is **GRANTED**. Accordingly, the tax deficiency assessments against petitioner for alleged deficiency income tax, VAT, WTC, EWT, and DST issued by respondent in the aggregate amount of ₱45,856,059.61 for the taxable year 2010 are **CANCELLED** and **SET ASIDE**.

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40 Paragraph 13, JSFI, id., Volume II, p. 754.
41 Division Docket, Volume I, pp. 393-395.
42 See Resolution dated 21 April 2017, id., p. 398.
43 Id., pp. 399-401.
44 Id., Volume II, pp. 751-759.
45 Id., pp. 999-1010.
46 Supra at note 1.

> Furthermore, respondent is likewise **ORDERED TO REFUND** in favor of petitioner the amount of **₱1,042,579.35** representing the deficiency EWT assessment it paid under protest.
>
> **SO ORDERED.**
>
> ...

In the assailed Decision, the First Division held that the two (2) waivers were defective because they were not accompanied by a notarized written authority given to the individual signing on behalf of respondent. As a result, the prescriptive period to assess respondent was not extended accordingly.

Petitioner filed a Motion for Reconsideration[47] (**MR**) on 21 November 2019, while respondent filed its Comment/Opposition[48] thereto on 24 January 2020.

Subsequently, the First Division promulgated the assailed Resolution[49] denying petitioner's MR. The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, respondent's *Motion for Reconsideration (of the Decision dated 25 October 2019)* posted on November 21, 2019, is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

<u>PROCEEDINGS BEFORE THE COURT *EN BANC*</u>

Unsatisfied, petitioner filed the instant Petition for Review[50] on 23 July 2020, to which respondent filed its Comment/Opposition[51] on 26 November 2020.

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47 Division Docket, Volume III, pp. 1502-1511.
48 Id., pp. 1521-1542.
49 Supra at note 2.
50 Supra at note 3.
51 *Rollo*, pp. 90-109.

On 05 January 2021, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.[52] Unfortunately, the parties decided not to mediate[53] hence, the case was submitted for decision on 01 March 2021.[54]

ISSUES

Petitioner raises the following issues for the Court *En Banc*'s consideration:

I.

WHETHER THE HONORABLE FIRST DIVISION OF THE COURT OF TAX APPEALS (CTA) ERRED IN GRANTING RESPONDENT SABRE TRAVEL NETWORK (PHILIPPINES), INC.'S PETITION FOR REVIEW AND NOT UPHOLDING THE DEFICIENCY ASSESSMENTS FOR INCOME TAX (IT), VALUE-ADDED TAX (VAT), WITHHOLDING TAX ON COMPENSATION (WTC), EXPANDED WITHHOLDING TAX (EWT), AND DOCUMENTARY STAMP TAX (DST), IN THE AGGREGATE AMOUNT OF ₱45,856,059.61 FOR TAXABLE PERIOD JANUARY 1, 2010 TO DECEMBER 31, 2010, MADE BY PETITIONER COMMISSIONER OF INTERNAL REVENUE (CIR) AGAINST RESPONDENT SABRE TRAVEL NETWORK (PHILIPPINES), INC.;

II.

WHETHER THE HONORABLE FIRST DIVISION OF THE COURT OF TAX APPEALS (CTA) ERRED IN DENYING HEREIN PETITIONER COMMISSIONER OF INTERNAL REVENUE'S (CIR's) MOTION FOR RECONSIDERATION (MR); AND,

III.

WHETHER THE TWO (2) WAIVERS OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE DATED 28 AUGUST 2013 AND 07 FEBRUARY 2014, RESPECTIVELY, ARE INVALID.[55]

The foregoing issues raised by petitioner can be summed up into a singular issue - *whether respondent's waivers as executed by respondent's President, Silverio, are valid.*

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[52] See Resolution dated 05 January 2021, id., pp. 115-116.
[53] PMC-CTA Form 6 – No Agreement to Mediate, id., p. 117.
[54] See Resolution dated 01 March 2021, id., pp. 119-120.
[55] Id., p. 5.

In support of his petition, petitioner argues that the deficiency tax assessments for IT, VAT, EWT, WTC and DST against respondent have not prescribed as the waivers were voluntarily and validly executed by respondent.

Silverio, the person whose name and signature appear on the face of the waivers, is respondent's duly authorized representative since he signed the same in his capacity as President. According to petitioner, the absence of any notarized document showing his authority from respondent to sign the waiver will not render the waivers defective (as he has already duly established his authority to act for and in behalf of the corporation).

Petitioner adds that a corporate president is often given general supervision and control over corporate operations and in the absence of charter or by-laws provision to the contrary, he is presumed to have the authority to act within the domain of the general objectives of its business and the scope of his or her usual duties.

Moreover, the authority to sign the waiver is not needed when the waiver is signed by the responsible official of a corporation, citing Revenue Memorandum Order (**RMO**) No. 20-90.[56] In this case, Silverio has clearly demonstrated that he is a responsible official of respondent as he has in fact consistently signed the waivers, reply to the PAN and protest to the FAN.

Petitioner also contends that respondent never questioned the validity of the waivers or the prescription of the assessment before the BIR and it only asserted the same for the first time in its prior Petition for Review. By virtue of the said waivers, respondent was given ample time and opportunity to submit documents to substantiate its claims before the BIR.

Petitioner insists that after the voluntary execution of the waivers, respondent was able to submit its supporting documents which were duly considered by the authorized ROs and thus affected

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[56] Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

the progress of the said investigation resulting to adjustments of its deficiency tax assessments as provided in the Notice of Informal Conference (**NIC**), PAN and FAN. Clearly, respondent significantly benefitted from the waivers and it should now be estopped from questioning their validity (by complaining about Silverio's authority to sign them).

With respect to the DST assessment, petitioner explains that the FAN's Details of Discrepancies would show that respondent was informed of the facts and law upon which the assessment for deficiency DST was based. Accordingly, respondent was assessed pursuant to Section 194[57] of the NIRC of 1997, as amended, in relation to RR No. 13-2004[58] for its failure to pay DST on its leases.

As regards the WTC assessment, the BIR Records would also show that the Assessment Notice (**AN**) for deficiency WTC was duly issued to respondent. In fact, in respondent's FOE, it can be inferred that respondent formally offered as Exhibit "P-10"[59] which supposedly refers to the Amended ANs for IT, EWT and WTC dated 20 December 2016.

Insofar as respondent's claim for refund of the deficiency EWT assessment it paid under protest in the amount of ₱1,042,579.35, petitioner argues that the same would only arise upon declaration of nullity of the assessment. However, petitioner's right to assess respondent for deficiency EWT has not prescribed because of respondent's waivers. Thus, instead of refund or issuance of tax credit certificate (**TCC**), the said payment should be applied against respondent's deficiency EWT.

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57 **Sec. 194.** *Stamp Tax on Leases and Other Hiring Agreements.* - On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp tax of Three pesos (P3.00) for the first Two thousand pesos (P2,000), or fractional part thereof, and an additional One peso (P1.00) for every One Thousand pesos (P1,000) or fractional part thereof, in excess of the first Two thousand pesos (P2,000) for each year of the term of said contract or agreement.

58 Implementing the Provisions of Republic Act No. 9243, An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

59 Amended Assessment Notices for Income Tax, Withholding Tax on Compensation and EWT dated 20 December 2016 and Final Decision on Disputed Assessment ("FDDA") dated 20 December 2016.

In its Comment/Opposition[60], respondent contends that petitioner's arguments have already been raised and resolved by the First Division such that no new matter warrants further consideration. Nevertheless, respondent argues that the deficiency tax assessments have already prescribed as the period to assess was not validly extended.

Respondent submits further that the requirement laid down in *Commissioner of Internal Revenue v. Kudos Metal Corporation*[61] (**Kudos Metal**) that "[i]n the case of a corporation, the waiver must be signed by any of its responsible officials" must be read together with the requirement that "[i]n case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized" even if he or she is the corporation's responsible official.

According to respondent, since it is a corporation, it acts through its Board of Directors or its authorized corporate officers through duly issued board resolutions. Inasmuch as the President is not the taxpayer but only a representative of the corporation, the authority to waive the corporation's rights must still be proven by a written and duly notarized document.

Responding to petitioner's argument that it never before questioned the validity of the waivers, the protest it filed shows that it questioned the assessments for CY 2010 which it deemed to have already prescribed on 15 April 2014.

As to the contention that respondent is already estopped from questioning the validity of the waivers pursuant to the rulings in *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[62] (**Next Mobile**) and *The Collector of Internal Revenue v. Suyoc Consolidated Mining Company, et al.*[63] (**Suyoc**), respondent submits that the aforesaid cases are not applicable because the facts therein are not in all fours with its case.

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60 Supra at note 51.
61 G.R. No. 178087, 05 May 2010.
62 G.R. No. 212825, 07 December 2015.
63 G.R. No. L-11527, 25 November 1958.

Respondent argues that, in contrast to the case of *Next Mobile*, it attacked the waivers' invalidity on the basis of the defects and infirmities therein and not *per se* the authority of its representative to execute them. Furthermore, in *Next Mobile*, the BIR and the taxpayer were in *pari delicto* because they knew the infirmities in the form of the five (5) waivers, but the BIR failed to rectify the same. In the instant case, the defects in the subject waivers (that they were executed after the original period to assess has prescribed and that they failed to specify the particular type and amount of tax) were not attributable to respondent. On the other hand, *Suyoc* is not also applicable because it involves the extension of the prescriptive period to collect deficiency taxes. Moreover, it did not involve the strict application of the requirements in RMO No. 20-90 because *Suyoc* was decided in 1958 and the former was issued only on 04 April 1990.

Rather, respondent claims that what should be applied is the case of *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*[64] where the Supreme Court, citing the case of *Kudos Metal*, refused to apply the doctrine of estoppel on matters involving the waiver considering that there is a detailed procedure for the proper execution of the waiver.

Respondent reiterates that the subject waivers are invalid considering that it was executed after the lapse of the prescriptive period and failure to comply with the requisites provided under RMO No. 20-90 and Revenue Delegation Authority Order (**RDAO**) No. 05-01.[65] It noted that the 1st waiver was executed in 28 August 2013 and accepted by respondent on 31 October 2013. However, respondent's last day to assess for deficiency VAT for the 1st to 3rd quarters fell on 26 October 2013 while the last day to assess the deficiency EWT and WTC for the months of January to September was on 11 October 2013.

With respect to its supposed deficiency IT, 4th quarter of VAT, and the months of October to December for EWT and WTC, all for CY 2010, respondent posits that the same are void because the waivers were not executed in accordance with RMO No. 20-90 and RDAO No. 05-01. Specifically, the waivers would show that there was a failure on

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64 G.R. No. 220835, 26 July 2017.

65 Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

the part of petitioner to indicate the specific type of tax and the amount assessed by the BIR.

Citing the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*[66], respondent insists that failure of the waivers to specify the kind and amount of the tax due is considered defective and ineffectual and as such, the period to assess should not be extended. Such ruling was reiterated in the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[67]

With respect to the assessed deficiency DST, respondent argues that petitioner did not provide any factual basis of its assessment. No lease contract involving real property was even alleged by petitioner to have been executed by respondent.

Additionally, respondent maintains that upon audit and verification, the Independent Certified Public Accountant (**ICPA**) found that the amount was based on the alleged rental expense for ₱14,627,599.60. The same was traced from the Alphalist relative to the income payments made to telecommunication companies which were subjected to 5% EWT. The ICPA thus concluded that petitioner erroneously presumed that *all* of respondent's rental payments pertained to lease of real property.

Despite not being raised in the instant petition, respondent further submits that the assessments against it are void for failing to state a specific payment date of demand. It cited the absence of specific due dates of payment stated or stamped in both the actual FAN and FDDA with the Amended ANs for IT, WTC and EWT. The space for the return of the eBIR Form No. 0605 was also left in blank.[68] With these, respondent is firm that the FAN and FDDA are clearly defective and ineffectual and such material defects should be considered in invalidating the assessments.

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66 G.R. No. 192173, 29 July 2015.
67 G.R. No. 211289, 14 January 2019.
68 Division Docket, Volume II, p. 899.

RULING OF THE COURT *EN BANC*

After a thorough consideration of the arguments raised by the parties vis-à-vis the pertinent laws, rules and jurisprudence, the Court *En Banc* finds partial merit in the instant petition.

At the onset, it must be noted that the Court *En Banc* agrees with and affirms the First Division's findings that: (1) petitioner's right to assess respondent for deficiency VAT for the 1st to 3rd quarters and EWT and WTC for the months of January to September, both of CY 2010, has already prescribed considering that the 1st waiver was accepted only on 31 October 2013 (or after the pertinent three-year periods to assess have already lapsed); (2) deficiency DST assessment should be cancelled as petitioner failed to state the factual basis thereof; and, (3) deficiency WTC assessment should likewise be cancelled as the *original* AN for WTC cannot be found in the records.

However, as to the supposed invalidity of the two (2) subject waivers, the Court *En Banc* disagrees with the majority opinion in the assailed Decision and Resolution[69], as would be further explained below.

Applying *Kudos Metal* in the assailed Decision and Resolution, the subject waivers were declared to be invalid due to the absence of a notarized written authority from respondent's Board of Directors authorizing the signatory to sign for the corporation.

We do not agree.

It is true that in *Kudos Metal*, the Supreme Court refused to apply the doctrine of estoppel, as there was no showing that the taxpayer therein made any request to persuade the BIR to postpone the issuance of the assessments. Thus, having caused the defects in the waivers, the Supreme Court held that the BIR must bear the consequence.

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69 Presiding Justice Roman G. Del Rosario registered a Concurring and Dissenting Opinion on this matter; Division Docket, Volume III, pp. 1497-1501.

However, in the more recent cases of *Next Mobile, Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*[70] (**Transitions Optical**) *and Asian Transmission Corporation v. Commissioner of Internal Revenue*[71] (**Asian Transmission**), the Supreme Court applied the doctrine of estoppel considering the circumstances obtaining therein.

Guided by the foregoing cases, the Court *En Banc* believes that the doctrine of estoppel should also be applied in the case at bar.

In *Next Mobile*[72], after executing five (5) waivers, the taxpayer questioned the authority of their signatory to sign the same. On the other hand, it was also found that the BIR violated its own rules and was careless in performing its functions with respect to these waivers. Noting that parties are in *pari delicto*, the Supreme Court ruled as follows:

> ...
> To be sure, both parties in this case are at fault.
>
> Here, respondent, through Sarmiento, executed *five* Waivers in favor of petitioner. **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 and RDAO 01-05 which requires the presentation of a written and notarized authority to the BIR.
>
> Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. 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.**

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70 G.R. No. 227544, 22 November 2017.
71 G.R. No. 230861, 19 September 2018.
72 Supra at note 62; Citations omitted, emphasis and italics in the original text and supplied.

Furthermore, it mandates that **the waiver should not be accepted by the concerned BIR office and official unless duly notarized.**
...

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

In this case, respondent, 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. 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.
...

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

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

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents.

As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

***Second*, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their 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.**

...

On the other hand, in *Transitions Optical*[73], the Supreme Court also held that estoppel applies therein as the **taxpayer failed to raise the invalidity of the waivers at the earliest opportunity**, to wit:

> ...
>
> Estoppel applies against a taxpayer who did not only raise at the earliest opportunity its representative's lack of authority to execute two (2) waivers of defense of prescription, but was also accorded, through these waivers, more time to comply with the audit requirements of the Bureau of Internal Revenue. Nonetheless, a tax assessment served beyond the extended period is void.
>
> ...
>
> *Estoppel similarly applies in this case*
>
> Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their noncompliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.
> Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. *First*, respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals. In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers, when it stated:
>
> > This has reference to the Final Assessment Notice ("[F]AN") issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, **five days after the waiver we issued which was valid until November 30, 2008 had prescribed.**
>
> ...

Lastly, *in Asian Transmission*[74], the Supreme Court held that **the primary responsibility for the proper preparation of the waiver rests with the taxpayer**; hence, the CIR may not be blamed for any defects in the execution thereof, *viz:*

[73] Supra at note 70; Citations omitted, emphasis and italics in the original text and underscoring supplied.

[74] Supra at note 71; Citation omitted, italics in the original text and emphasis supplied.

> ...
>
> **We reiterate through this decision that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver.**
>
> ...
>
> We agree with the holding of the CTA *En Banc* that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile Inc*. The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, **a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party.** Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates.
>
> Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse. Indeed, the Court observed in *Commissioner of Internal Revenue v. Next Mobile Inc*. that:
>
>> 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. 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.

> Thus, the CTA *En Banc* did not err in ruling that ATC, after having benefitted from the defective waivers, should not be allowed to assail them. In short, the CTA *En Banc* properly applied the equitable principles of in *pari delicto*, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile case.*
>
> ...

Applying the foregoing cases herein, it is evident that respondent is likewise estopped from questioning the validity of the subject waivers. The applicability of the said cases is further discussed below, *in seriatim.*

First, it is indubitable that respondent was able to defer the issuance of the assessments against it after the execution of the subject waivers. The BIR also relied on the waivers and thus had given respondent more time to submit its documents. Thus, similar to *Next Mobile,* this Court could only conclude that respondent could not have been acting entirely in good faith in impugning its own waivers after having already benefitted therefrom (and allowing petitioner to rely on the same).

It bears emphasizing that the signatory in the subject waivers is no less than respondent's President himself, Silverio. An examination of the records of the case would reveal that Silverio, apart from signing respondent's reply[75] to the PAN and protest[76] to the FAN, also signed the IT[77], VAT[78], WTC[79] and EWT[80] returns subject of the assessments.

In *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals, et al.*[81], the Supreme Court ruled:

> ...
>
> Petitioner's argument is not persuasive. Apparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the

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75 Supra at note 18.
76 Supra at note 23.
77 Exhibit "P-17", Division Docket, Volume II, pp. 937-939.
78 Exhibits "P-18" to "P-22", id., pp. 970-974.
79 Exhibits "P-27481" to "P-27492", CD.
80 Exhibits "P-27469" to "P-27480", CD.
81 G.R. No. 117847, 07 October 1998; Citations omitted and emphasis supplied.

apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.

In the case at bar, petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation. ...

...

The First Contract was consummated, implemented and paid without a hitch.

Hence, private respondent should not be faulted for believing that Punsalan's conformity to the contract in dispute was also binding on petitioner. It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

Furthermore, private respondent prepared an operations manual and conducted a seminar for the employees of petitioner in accordance with their contract. Petitioner accepted the operations manual, submitted it to the Bureau of Customs and allowed the seminar for its employees. As a result of its aforementioned actions, petitioner was given by the Bureau of Customs a license to operate a bonded warehouse. Granting arguendo then that the Second Contract was outside the usual powers of the president, petitioner's ratification of said contract and acceptance of benefits have made it binding, nonetheless. The enforceability of contracts under Article 1403(2) is ratified "by the acceptance of benefits under them" under Article 1405.

Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence

> **of a charter or bylaw provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.**
>
> **Hence, it has been held in other jurisdictions that the president of a corporation possesses the power to enter into a contract for the corporation, when the "conduct on the part of both the president and the corporation [shows] that he had been in the habit of acting in similar matters on behalf of the company and that the company had authorized him so to act and had recognized, approved and ratified his former and similar actions." Furthermore, a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy.**
>
> ...

To the mind of the Court *En Banc*, this is also the reason why *Kudos Metal* cannot be applied herein as the person who executed the waiver in that case is only the taxpayer's **accountant**. In stark contrast to herein case, the waivers were signed by no less than respondent's **President** who, by his previous acts of signing the pertinent tax returns and subsequent acts of signing the reply to PAN and protest to FAN, had already effectively held himself out as the one authorized by the corporation to act on its behalf.

Second, similar to *Transitions Optical,* respondent herein likewise did not raise its objections to the validity of the waivers at the earliest opportunity.

We echo the Concurring and Dissenting Opinion[82] of Presiding Justice Roman G. Del Rosario to the assailed Decision when he aptly observed:

> ...
> Records show that [respondent] never raised the issue on the invalidity of the two (2) Waivers when it filed its Letter-Reply to the Preliminary Assessment Notice (PAN) dated December 8, 2014 and Protest Letter to the FAN dated January 21, 2015. Stated differently, [respondent] never questioned either the validity of the Waivers or

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82 Supra at note 69; Citations omitted and emphasis and italics in the original text.

> the prescription of the assessment for deficiency taxes for the year 2010 before the Bureau of Internal Revenue. In truth, [respondent] asserts for the first time in its Petition for Review that the Waivers are invalid.
>
> ...
>
> In the case at bar, [respondent] voluntarily executed and submitted the subject Waivers, one after the other, and never bothered to raise its objection thereto at the administrative level, and instead decided to impugn their validity after the issuance of the assessment on the ground that its own President, the highest ranking official of [respondent], had no authority to sign the Waivers.
>
> [Respondent's] general attitude in the course of the assessment proceedings depicts an admission that the said Waivers are valid. Thus, applying the pronouncement in *Next Mobile*, by the principle of estoppel, [respondent] may no longer question the validity of the Waivers and raise the defense of prescription against the government's right to assess. **Impugning the validity of the Waivers from which it benefited and after persuading [petitioner] to postpone the issuance of the FAN is palpably reprehensible.**
>
> ...

Thus, for failing to raise at the earliest possible opportunity (or the time it filed its reply to PAN or protest to FAN) the issue on Silverio's supposed lack of authority to execute the subject waivers and for waiting until the BIR's findings have become averse to it, respondent's actions should not be given premium. Instead, it should be deemed estopped from questioning the waivers.

Lastly, as recognized in *Asian Transmission*, the primary responsibility for the proper preparation of the waiver is lodged with the taxpayer or its authorized representative signing the waiver; such responsibility did not pertain to the BIR as the receiving party.

Considering thus that it is the taxpayer's primary responsibility to properly prepare the waiver, respondent cannot be permitted to raise the very same deficiency it caused to avoid the tax liability determined by the BIR during the extended assessment period.

As regards the other defect raised by respondent, specifically, that the waivers likewise failed to specify the kind and amount of tax, the Court *En Banc* believes that the same, by itself, is not sufficient to render the same invalid. This is especially so when the subject waivers simply followed the form prescribed by RDAO No. 05-01 (both in fact stating that they cover "All Internal Revenue Tax Liabilities for the calendar year ending December 31, 2010") and such alleged defect was likewise not raised at the earliest possible opportunity (similar to the supposed lack of notarized written authority in favor of Silverio).

Moreover, it was correctly pointed out in the assailed Decision that while there are cases where the Supreme Court took note of the fact that there are waivers which did not specify the kind of tax and the amount due thereon, there is no precise requirement in RMO No. 20-90 and RDAO No. 05-01 for the waiver to specify the kind of tax and the amount of tax due.

At any rate, the Court *En Banc* finds sufficient the reason offered by petitioner's witness as to why the waivers did not specify the kind and amount of tax, that is, respondent's deficiency taxes were then still under an ongoing audit and respondent may still file additional supporting documents.[83]

With the foregoing disquisitions, the Court *En Banc* holds that petitioner's right to assess respondent for deficiency VAT for the 4th quarter as well as deficiency EWT and WTC for the months of October to December, all of CY 2010, has not yet prescribed.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed on 23 July 2020 by petitioner Commissioner of Internal Revenue is hereby **PARTIALLY GRANTED** and the Decision dated 25 October 2019 and Resolution dated 26 June 2020 of the First Division in CTA Case No. 9532, entitled *Sabre Travel Network (Philippines), Inc. (formerly Abacus Distribution Systems Philippines, Inc.) v. Commissioner of Internal Revenue,* are hereby deemed **MODIFIED** as to the findings on the invalidity of the Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated 28 August 2013 and 07 February 2014. Accordingly, let the case records be **REMANDED** to the First Division for the determination of amount due from respondent Sabre Travel

[83] Question & Answer Nos. 22 & 28, Judicial Affidavit of Revenue Officer Jose Eric Almosara, id., Volume I, pp. 413-414.

Network (Philippines), Inc., if any, with respect to the unprescribed portions of its deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax assessments for calendar year 2010.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice