REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RURAL BANK OF BACNOTAN (LA UNION), INC.,
Respondent.

CTA EB NO. 2436
(CTA Case No. 9118)

Present:

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

Promulgated:

JUL 28 2022
4:20 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

[1] Filed on 10 February 2021, *Rollo*, pp. 1-56, with annexes.

[2] **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

(**RRCTA**), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). He seeks the reversal of the Decision dated 02 March 2020[3] (**assailed Decision**) and the Resolution dated 21 January 2021[4] (**assailed Resolution**) of the Court's Third Division[5] in CTA Case No. 9118, entitled *Rural Bank of Bacnotan (La Union), Inc. v. Commissioner of Internal Revenue.*

THE PARTIES OF THE CASE

Respondent is in the business of extending rural credit to small farmers and tenants, and to reserving rural industries or enterprises. It is registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer Identification Number (**TIN**) 000-541-789-000.[6]

Petitioner, on the other hand, is the duly appointed CIR, and holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City where he may be served with summons and other legal processes.[7]

FACTS OF THE CASE

On 17 March 2011, respondent filed its Annual Income Tax Return (**ITR**) for taxable year (**TY**) 2010.[8]

On 16 December 2011, respondent received Letter of Authority (**LOA**) No. 003-2011-00000315 (SN:eLA201000069930)[9] dated 06 December 2011, authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes except for Value-Added Tax (**VAT**) and Final Withholding VAT, for TY 2009 and 2010.

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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.

3 Division Docket, Volume V, pp. 2421-2437.

4 Id., pp. 2460-2466.

5 Penned by Associate Justice Erlinda P. Uy with Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

6 Division Docket, Volume V, pp. 2422.

7 Id.

8 Exhibit "P-4", CD attached to respondent's supplemental FOE.

9 Exhibit "R-1", BIR Records, p. 2.

On 09 October 2013, respondent executed a Waiver of the Defense of Prescription under the Statute of Limitations[10] (**First Waiver**) signed by its President/Manager Nicolas T. Flores (**Flores**). Petitioner, through Officer-in-Charge-Revenue District Officer Amador R. Ducut (**OIC-RDO Ducut**), accepted the same on 15 October 2013. Thereafter, on 03 December 2014, respondent received from petitioner a Preliminary Assessment Notice[11] (**PAN**), dated 26 November 2014. The PAN reflected respondent's alleged deficiency taxes for the TY 2010 in the total amount of ₱2,884,647.67, inclusive of interest.

In response to the PAN, respondent sent a letter[12] dated 12 December 2014 (**First Protest**) contesting the proposed imposition of internal revenue tax liabilities and increments. On 15 December 2014, petitioner received the said protest.

On 16 December 2014, respondent executed another Waiver of the Defense of Prescription under the Statute of Limitations[13] (**Second Waiver**). Subsequently, on 06 January 2015, it also received a Formal Letter of Demand with attached Assessment Notices[14] (**FLD/FAN**) dated 22 December 2014, reiterating the assessments on deficiency income tax (**IT**), gross receipts tax (**GRT**), expanded withholding tax (**EWT**), final withholding tax (**FWT**) and compromise penalties in the aggregate amount of ₱2,876,956.52.

On 14 January 2015, respondent filed a protest[15] to the FLD/FAN (**Second Protest**) which the BIR received on 15 January 2015.

Later, alleging petitioner's inaction on its protests, respondent filed its Petition for Review[16] with this Court on 13 August 2015. The case was raffled initially to the Court's First Division.

[10] Exhibit "R-5", id., p. 88.
[11] Exhibit "R-13", id., pp. 210-213.
[12] Exhibit "P-10", CD attached to respondent's supplemental FOE.
[13] Exhibit "R-15", BIR Records, p. 276.
[14] Exhibits "P-12-1" to "P-12-5", CD attached to respondent's supplemental FOE.
[15] Exhibit "P-13", id.
[16] Division Docket, Volume I, pp. 10-41.

After petitioner filed his Answer[17] on 02 October 2015, the Pre-Trial Conference[18] was set on 11 February 2016. Thereafter, on 02 March 2016, the parties filed their Joint Stipulation of Facts and Issues[19] (**JSFI**) which was approved in a Resolution[20] dated 14 March 2016. Subsequently, or on 26 April 2016, the First Division issued a Pre-Trial Order.[21]

During the trial proper, respondent presented the following witnesses, namely: (1) Sylvia L. Florendo (**Florendo**), its Acting Internal Auditor; (2) Vina Rose D. Mariñas (**Mariñas**), its Chief Compliance Officer; and, (3) Atty. Adan T. Delamide (**Atty. Delamide**), the Court-commissioned Independent Certified Public Accountant (**ICPA**) who all testified through their judicial affidavits.

Florendo testified essentially that petitioner erred in the computation of respondent's tax liabilities. According to Florendo, the BIR did not check respondent's Cash Receipt Books. Consequently, the BIR failed to see that respondent's service charges were already included in its Interest Income for which the 5% percentage tax has been paid thus leaving no unreported income (as opposed to the BIR's findings).[22]

Mariñas, on the other hand, testified to respondent's receipt of the PAN and FLD/FAN, and the filing of its protest and subsequent judicial appeal within the reglementary periods.[23]

Lastly, the ICPA, Atty. Delamide, testified on his examination of respondents' documents and records, and concluded the assessments against it had already prescribed.[24]

With no further witnesses to present, respondent filed its Formal Offer of Evidence[25] (**FOE**) on 03 April 2017. On 23 May 2017, petitioner filed its Comment (Re: [Respondent's] Formal Offer of Evidence).[26]

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17 Id., Volume IV, pp. 1744-1752.
18 Id., pp. 1753-1754.
19 Id., pp. 1827-1835.
20 Id., p. 1838.
21 Id., pp. 1871-1883.
22 Exhibit "P-31", id., pp. 1799-1802.
23 Exhibit "P-32", id., pp. 1803-1805.
24 Exhibit "P-48", id., pp. 2132-2139.

In a Resolution[27] dated 04 September 2017, the First Division admitted most of respondent's documentary exhibits except for: Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-5-1" to "P-5-12", "P-6", "P-6-1" to "P-6-13", "P-7", "P-7-1" to "P-7-12, "P-8","P-8-1" to "P-8-4", "P-9", "P-10", "P-11", "P-12", "P12-1" to "P-12-5", "P-13", "P-14", "P-14-1" to "P-14-3", "P-15", "P-15-1" to "P-15-3-205", "P16", and "P-16-1".[28] The First Division found that these exhibits were either not identified, submitted or duly marked.

On 20 September 2017, respondent filed an "Omnibus Motion (a) Motion for Partial Reconsideration (b) Motion to Re-Open Trial"[29] (**Omnibus Motion**), praying that it be allowed to submit the foregoing denied exhibits and for its witnesses to identify them in

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25 Id., pp. 2188-2199.
26 Id., pp. 2205-2207.
27 Id., pp. 2214-2215.
28

Exhibit	Document
"P-1"	Securities and Exchange Commission Amended Articles of Incorporation dated 13 June 2011.
"P-2"	Certificate of Authority issued by the Monetary Board of the Central Bank of the Philippines dated 16 February 1962.
"P-3"	Certificate of Registration with the BIR.
"P-4"	Petitioner's 2010 Annual Income Tax Return (ITR) [BIR Form No. 1702] filed on 17 March 2011 and its supporting documents.
"P-5", and "P-5-1" to "P-5-12"	Schedule of Monthly Gross Receipts Tax for 2010 and supporting tax returns.
"P-6", and "P-6-1" to "P-6-13"	Schedule of Monthly Expanded Withholding Tax Returns for 2010 and supporting tax returns.
"P-7", and "P-7-1" to "P-7-12	Schedule of Monthly Final Withholding Tax Returns for 2010 and supporting tax returns.
"P-8", and "P-8-1" to "P-8-4"	Petitioner's Audited Financial Statements for 2010 and supporting documents.
"P-9"	Preliminary Assessment Notice (PAN) dated 26 November 2014.
"P-10"	Written reply to the PAN dated 12 December 2014.
"P-11"	Waiver of the Defense of Prescription Under Statute of Limitations of National Internal Revenue Code.
"P-12"	CIR's Letter dated 15 December 2014.
"P-12-1" to "P-12-5"	Formal Letter of Demand and Assessment Notices (FLD/FAN) dated 22 December 2014.
"P-13"	Petitioner's protest to the and Assessment Notices (FLD/FAN) dated 14 January 2015.
"P-14", and "P-14-1" to "P-14-3"	2009 Annual Income Tax Return and its accompanying audited financial statements and other documents.
"P-15", and "P-15-1" to "P-15-3-205"	Reconciliation of Interest Income and Service Charge for 2010; List of Official Receipts for Interest Earned; and supporting official receipts.
"P-16", and "P-16-1"	Monthly Percentage Tax Return for December 2010 and its accompanying document.

29 Division Docket, Volume IV, pp. 2224-2236.

court. On 13 October 2017, petitioner filed its opposition to respondent's Omnibus Motion.[30]

In a Resolution dated 06 December 2017[31], the First Division re-opened trial. Florendo[32] and Mariñas[33] were recalled to the witness stand where they identified some of the denied exhibits through their respective judicial affidavits. Thereafter, respondent filed its Supplemental FOE[34] on 01 February 2018, with petitioner's "Comment (Re: [Respondent's] Supplemental Formal Offer of Evidence)"[35] on 02 February 2018.

In a Resolution dated 02 March 2018[36], the First Division admitted respondent's previously denied exhibits and deemed the latter to have rested its case accordingly.

For his part, petitioner presented the following witnesses, namely: (1) Revenue Officer (**RO**) Anna Rose T. Romero (**Romero**); and, (2) RO Venus B. Ferrer (**Ferrer**) who both testified through their Judicial Affidavits.

On the witness stand, Romero testified that the assessment against respondent has yet not prescribed. He also attested to the PAN's service on respondent and the latter's execution of the First Waiver.[37]

When Ferrer assumed the witness stand, she corroborated Romero's testimony regarding the non-prescription of the assessment against respondent. She further testified to respondent's execution of the Second Waiver and FLD/FAN's issuance.[38]

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30 Id., pp. 2244-2247.
31 Id., pp. 2250-2253.
32 Exhibit "P-2436", Supplemental Judicial Affidavit of Sylvia L. Florendo, id., pp. 2254-2254.
33 Exhibit "P-2437", Supplemental Judicial Affidavit of Vina Rose D. Mariñas, id., pp. 2263-2268.
34 Id., pp. 2280-2285.
35 Id., pp. 2286-2287.
36 Id., pp. 2293-2295.
37 Exhibit "R-18", Judicial Affidavit of Anna Rose T. Romero, id., pp. 1775-1779.
38 Exhibit "R-17", Judicial Affidavit of RO Venus B. Ferrer, id., pp. 1785-1789.

Thereafter, on 23 May 2018, petitioner proceeded to file his FOE.[39] Respondent's Comment[40] thereto was filed on 13 June 2018. In a Resolution dated 06 August 2018[41], the First Division noted discrepancies between the Exhibit numbers in petitioner's FOE and their actual markings. Petitioner was then given a period of ten (10) days to rectify the errors. Subsequently, petitioner filed his Amended FOE[42] on 23 August 2018.

In the *interim*, in an Order dated 25 September 2018[43], the case was transferred to the Court's Third Division by virtue of CTA Administrative Circular No. 02-2018.[44]

In a Resolution dated 18 January 2019[45], the Third Division admitted all of petitioner's evidence and directed the parties to file their respective Memorandum within thirty (30) days from notice thereof.

Respondent filed its Memorandum[46] on 26 February 2019, while petitioner filed his Memorandum[47] on 21 March 2019. Subsequently, the case was submitted for decision in a Resolution dated 26 March 2019.

On 02 March 2020, the Third Division promulgated the assailed Decision.[48] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Final Assessment Notices assessing [respondent] for deficiency income tax, gross receipts tax, expanded withholding tax, final withholding tax and compromise penalties for taxable year 2010 in the total amount of ₱2,844,647.67 are **CANCELLED** and **WITHDRAWN**.

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39 Id., pp. 2314-2321.
40 Id., pp. 2329-2330.
41 Id., pp. 2342-2343.
42 Id., pp. 2345-2352.
43 Id., Volume V, p. 2354.
44 "Reorganizing the Three (3) Divisions of the Court" dated 18 September 2018.
45 Division Docket, Volume V, pp. 2356-2357.
46 Id., pp. 2369-2401.
47 Id., pp. 2405-2415.
48 Supra at note 3.

SO ORDERED.

...

In ruling against petitioner, the Third Division found the Waivers executed between the parties to be defective for non-compliance with the provisions of Revenue Memorandum Order (**RMO**) No. 20-90[49] and Revenue Delegation Administrative Order (**RDAO**) No. 05-01.[50]

Following the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[51] (**La Flor**), the Third Division found respondent's Waivers invalid for failing to indicate the exact amount of the tax due assessed or collected. Pursuant to this, the periods for a regular assessment under Section 203 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, was deemed applicable to respondent's case. It quoted Section 203 providing thusly:

> ...
> **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
> ...

Accordingly, the Third Division found the following dates pertaining to respondent's tax payments and the periods for their assessment:

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49 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code issued on 04 April 1990.

50 Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations issued on 02 August 2001.

51 G.R. No. 211289, 14 January 2019.

Income tax – Annual Filing (Year 2010)

Tax Return	Date of Actual Filing	Last day to File Return	Last Day to Assess
Annual Income Tax Return CY 2010[52]	17 March 2011	15 April 2011	15 April 2014

GRT – Monthly Filing (Year 2010)

Tax Return	Date of Actual Filing	Last day to File Return	Last Day to Assess
January[53]	16 February 2010	20 February 2010	20 February 2013
February[54]	17 March 2010	20 March 2010	20 March 2013
March[55]	19 April 2010	20 April 2010	20 April 2013
April[56]	17 May 2010	20 May 2010	20 May 2013
May[57]	17 June 2010	20 June 2010	20 June 2013
June[58]	19 July 2010	20 July 2010	20 July 2013
July[59]	19 August 2010	20 August 2010	20 August 2013
August[60]	16 September 2010	20 September 2010	20 September 2013
September[61]	18 October 2010	20 October 2010	20 October 2013
October[62]	18 November 2010	20 November 2010	20 November 2013
November[63]	16 December 2010	20 December 2010	20 December 2013
December[64]	17 January 2011	20 January 2011	20 January 2014

EWT – Monthly Filing (Year 2010)

Tax Return	Date of Actual Filing	Last day to File Return	Last Day to Assess
January[65]	08 February 2010	10 February 2010	10 February 2010
February[66]	09 March 2010	10 March 2010	10 March 2010
March[67]	08 April 2010	10 April 2010	10 April 2013
April[68]	06 May 2010	10 May 2010	10 May 2013
May[69]	08 June 2010	10 June 2010	10 June 2013
June[70]	08 July 2010	10 July 2010	10 July 2013

52 Exhibit "P-4", supra at note 8.
53 Exhibit "P-5-1" and Exhibit "P-5-1-1", CD attached to respondent's supplemental FOE.
54 Exhibit "P-5-2" and Exhibit "P-5-2-1", id.
55 Exhibit "P-5-3" and Exhibit "P-5-3-1", id.
56 Exhibit "P-5-4" and Exhibit "P-5-4-1", id.
57 Exhibit "P-5-5" and Exhibit "P-5-5-1", id.
58 Exhibit "P-5-6" and Exhibit "P-5-6-1", id.
59 Exhibit "P-5-7" and Exhibit "P-5-7-1", id.
60 Exhibit "P-5-8" and Exhibit "P-5-8-1", id.
61 Exhibit "P-5-9" and Exhibit "P-5-9-1", id.
62 Exhibit "P-5-10" and Exhibit "P-5-10-1", id.
63 Exhibit "P-5-11" and Exhibit "P-5-11-1", id.
64 Exhibit "P-5-12" and Exhibit "P-5-12-1", id.
65 Exhibit "P-6-1" and Exhibit "P-6-1-1", id.
66 Exhibit "P-6-2" and Exhibit "P-6-2-1", id.
67 Exhibit "P-6-3" and Exhibit "P-6-3-1", id.
68 Exhibit "P-6-4" and Exhibit "P-6-4-1", id.
69 Exhibit "P-6-5" and Exhibit "P-6-5-1", id.
70 Exhibit "P-6-6" and Exhibit "P-6-6-1", id.

July[71]	09 August 2010	10 August 2010	10 August 2013
August[72]	09 September 2010	10 September 2010	10 September 2013
September[73]	07 October 2010	10 October 2010	10 October 2013
October[74]	09 November 2010	10 November 2010	10 November 2013
November[75]	09 December 2010	10 December 2010	10 December 2013
December[76]	10 January 2011	15 January 2011	15 January 2014

FWT – Monthly Filing (Year 2010)

Tax Return	Date of Actual Filing	Last day to File Return	Last Day to Assess
January[77]	08 February 2010	10 February 2010	10 February 2010
February[78]	09 March 2010	10 March 2010	10 March 2013
March[79]	08 April 2010	10 April 2010	10 April 2013
April[80]	06 May 2010	10 May 2010	10 May 2013
May[81]	08 June 2010	10 June 2010	10 June 2013
June[82]	08 July 2010	10 July 2010	10 July 2013
July[83]	09 August 2010	10 August 2010	10 August 2013
August[84]	09 September 2010	10 September 2010	10 September 2013
September[85]	07 October 2010	10 October 2010	10 October 2013
October[86]	09 November 2010	10 November 2010	10 November 2013
November[87]	09 December 2010	10 December 2010	10 December 2013
December[88]	10 January 2011	15 January 2011	15 January 2014

Given that the FLD/FAN was only issued on 22 December 2014, the Third Division also ruled that the final assessment of respondent was issued beyond the three (3)-year period provided in Section 203 of the NIRC of 1997, as amended.

Aggrieved, petitioner filed a Motion for Reconsideration[89] (**MR**) on 10 June 2020. In the similarly assailed Resolution[90] of 21 January 2021, the Third Division denied petitioner's MR.

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71 Exhibit "P-6-7" and Exhibit "P-6-7-1", id.
72 Exhibit "P-6-8A" and Exhibit "P-6-8A-1", id.
73 Exhibit "P-6-9" and Exhibit "P-6-9-1", id.
74 Exhibit "P-6-10" and Exhibit "P-6-10-1", id.
75 Exhibit "P-6-11" and Exhibit "P-6-11-1", id.
76 Exhibit "P-6-12" and Exhibit "P-6-12-1", id.
77 Exhibit "P-7-1" and Exhibit "P-7-1-1", id.
78 Exhibit "P-7-2" and Exhibit "P-7-2-1", id.
79 Exhibit "P-7-3" and Exhibit "P-7-3-1", id.
80 Exhibit "P-7-4" and Exhibit "P-7-4-1", id.
81 Exhibit "P-7-5" and Exhibit "P-7-5-1", id.
82 Exhibit "P-7-6" and Exhibit "P-7-6-1", id.
83 Exhibit "P-7-7" and Exhibit "P-7-7-1", id.
84 Exhibit "P-7-8" and Exhibit "P-7-8-1", id.
85 Exhibit "P-7-9" and Exhibit "P-7-9-1", id.
86 Exhibit "P-7-10" and Exhibit "P-7-10-1", id.
87 Exhibit "P-7-11" and Exhibit "P-7-11-1", id.
88 Exhibit "P-7-12" and Exhibit "P-7-12-1", id.

Hence, the present petition[91] before the Court *En Banc*.

After respondent filed its Comment[92] to the instant petition on 19 May 2021, the case was referred to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.[93] With the parties failure to arrive at a compromise[94], the Court submitted the case for decision in a Resolution dated 28 July 2021.[95]

ISSUES

In this petition, petitioner puts forward the following issues for the Court *En Banc*'s resolution:

> I.
> WHETHER THE WAIVERS OF RESPONDENT RURAL BANK OF BACNOTAN (LA UNION), INC. WERE VALIDLY EXECUTED HENCE, EXTENDING THE PERIOD TO ASSESS; AND,
>
> II.
> WHETHER THE THIRD DIVISION OF THE HONORABLE COURT ERRED WHEN IT CANCELLED THE DEFICIENCY INCOME TAX, GROSS RECEIPTS TAX, EXPANDED WITHHOLDING TAX, FINAL WITHHOLDING TAX AND COMPROMISE PENALTIES.[96]

In support of the above, petitioner contends that respondent's Waivers validly extended the period for the BIR to assess it. He claims that respondent should be estopped from questioning the Waivers' validity and it was an error for the Third Division to rule that the assessment had already prescribed. He further stresses that the assessment of respondent is supported by legal and factual bases.

Respondent, on the other hand, echoes the Third Division's ruling as regards the assessment's prescription. It also adds that the assessment is void since petitioner did not consider its arguments

89 Division Docket, Volume V, pp. 2438-2451.
90 Supra at note 4.
91 Supra at note 1.
92 *Rollo*, pp. 60-86.
93 See Resolution dated 08 June 2021, id., pp. 88-89
94 No Agreement to Mediate, id., p. 90.
95 Id., pp. 92-93.
96 Supra at note 1, p. 3.

supporting documents in denying its protest to the PAN and issuance of the FLD/FAN. Additionally, it maintains that, at any rate, petitioner's findings and calculations are erroneous as shown by its documentary evidence.

RULING OF THE COURT *EN BANC*

Except on the matter of respondent's Waivers being invalid and that prescription has set in, the Court *En Banc* fully agrees with the Third Division's actions in this case.

RESPONDENT IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE WAIVERS.

As cited in the assailed Decision, the Supreme Court in *La Flor* ruled:

> ...
>
> In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit:
>
>> **These requirements are mandatory and must strictly be followed**. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
>>
>> ...
>>
>> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending

internal revenue case as required under RMO No. 20-90.

Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

...

3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity.

In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver.[97]

...

As an exception, there are, however, instances where waivers were considered valid despite their non-compliance with RMO No. 20-90 and RDAO No. 05-01, in consideration of the principle of estoppel. In the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc.)*[98] [**Next Mobile**], the Supreme Court ruled, thusly:

97 Supra at note 51.

98 G.R. No. 212825, 07 December 2015; Citations omitted and italics in the original text.

...

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.
>
> ...

Upon examination of respondent's First Waiver, the Court *En Banc* notes the following defects:

(1) It does not contain the kind and exact amount of tax due;
(2) The fact of receipt was not indicated on the face of the First Waiver; and,
(3) There is no board resolution showing the authority of respondent's representative to the First Waiver on the former's behalf.

On the other hand, the Second Waiver shows that:

(1) It does not contain an exact amount of the tax due;
(2) There is no board resolution showing the authority of respondent's representative to the Second Waiver on the former's behalf.

Notwithstanding these infirmities, the Court *En Banc* is nevertheless inclined to rule in favor of the Waivers' validity for the reasons set forth below.

First, it is noteworthy that in *La Flor*, the Supreme Court's declaration on the invalidity of the waivers therein appears to be an *obiter dictum* which means "words of a prior opinion entirely unnecessary for the decision of the case".[99]

An examination of *La Flor* reveals that the CIR failed to present the two prior waivers into evidence while only the existence of the last waiver was stipulated by the parties. This fact led the CTA to conclude that the assessments had already prescribed given the lack of the previous waivers.

In the CIR's appeal before the Supreme Court, the CIR raised the argument that the previous waivers should have been considered although they failed to submit the same during trial. In denying the CIR's argument, the Supreme Court held that even if the waivers were considered, they would still be invalid as they did not specify the kind and amount of tax due.[100]

The fact of whether or not the previous waivers were defective in *La Flor* were not essential for the case's disposal as none of these previous waivers were offered or presented into evidence by the CIR[101], and as a rule "evidence not offered is excluded in the determination of the case".[102]

In stark contrast to *La Flor,* both Waivers here were duly identified and marked before the Third Division in the case at bar.

Second, unlike in *La Flor* where the only defect found in the waivers was the absence of the kind and amount of tax due, the Waivers in this case have several defects as previously mentioned.

Third, respondent cannot raise defects that were caused by it. It is noted that in its Comment/Opposition, respondent does not deny executing the Waivers although it argues that Flores, its

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99 *Sta. Lucia Realty and Development, Inc., et al. v. Leticia Cabrigas, et al.*, G.R. No. 134895, 19 June 2001, Black's Law Dictionary, p. 1222, citing the case of *Noel v. Olds*, 78 U.S. App. D.C. 155.

100 See *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, supra at note 97.

101 Id.

102 *Republic of the Philippines v. Fe Roa Gimenez, et al.*, G.R. No. 174673, 11 January 2016.

President/Manager, was not authorized to sign the same on its behalf. In *Next Mobile,* the Supreme Court viewed the taxpayer's act of executing waivers without the requisite authority, coupled with the BIR's failure to procure from the taxpayer a notarized authority, as highly suspicious.[103]

It must be emphasized that the signatory to the subject Waivers was none other than respondent's own President. The records show that Flores not only executed both Waivers but he also received the PAN and FLD/FAN on respondent's behalf. Likewise, he signed both protests to the PAN and FLD/FAN. Therefore, it becomes highly doubtful that Flores lacked the authority to sign the Waivers since he was respondent's representative in every vital exchange between it and the BIR. As it appears, respondent either denies or upholds Flores' authority as it deems convenient to its case.

Moreover, despite the absence of a separate authority furnished to the BIR to execute the Waivers, respondent's actions, and taking into account Flores's position in the corporation, clearly establish Flores' apparent authority to bind respondent. In *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals, et al.*[104], 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 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.

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103 Supra at note 98.

104 G.R. No. 117847, 07 October 1998; Citations omitted and emphasis supplied.

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.**
>
> ...

Fourth, respondent was furnished a copy of the Waivers. Although the First Waiver did not have a receipt date stamped on its face, respondent's subsequent acts show that it was well aware of the First Waiver's acceptance.

As the records bear out clearly, the First Waiver was executed and accepted prior to the PAN's issuance on 26 November 2014. If it was a fact that respondent was not issued a copy of the accepted First Waiver, prudence would dictate that it should raise such matter in its protest to the PAN (given that at the time of its issuance, the assessment would have already prescribed if it weren't for the First Waiver's acceptance). However, instead of contesting the assessment on the ground of prescription, respondent went on to challenge the BIR's computations and thereafter, executed the Second Waiver on 16 December 2014.

A perusal of the Second Waiver would show that Flores received the same on 19 December 2014 as opposed to respondent's allegations. Equally, respondent made no mention of either the First Waiver's or the Second Waiver's defects in its subsequent protest to the FLD/FAN.

With the foregoing disquisition, the Court could only then conclude that respondent is already estopped from denying the Waivers' validity on the basis of the aforementioned defects.

In *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*[105] (**TOPI**), the Supreme Court held that estoppel applies where the **taxpayer failed to raise the invalidity of the waivers at the earliest opportunity**, to wit:

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[105] G.R. No. 227544, 22 November 2017; Citations omitted, italics and emphasis in the original text and underscoring supplied.

> ...
> 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 non[-]compliance 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, the mentioned defects in respondent's Waivers are not solely attributable to the CIR unlike in *La Flor*. In the case of *Asian Transmission Corporation v. Commissioner of Internal Revenue*[106] (**Asian Transmission**), 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:*

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106 G.R. 230861, 19 September 2018; Citations omitted 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.

...

In this case, the CTA in Division noted that the eight waivers of ATC contained the following defects, to wit:

1. The notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice;

2. Several waivers clearly failed to indicate the date of acceptance by the Bureau of Internal Revenue;

3. The Waivers were not signed by the proper revenue officer; and

4. The Waivers failed to specify the type of tax and the amount of tax due.

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*.
>
> ...

For the foregoing reasons, as stated, the Court finds the Waivers herein valid on the basis of equity as both parties shared responsibility for their infirmities. Accordingly, respondent as a party to the faulty Waivers is precluded from questioning the validity thereof on the basis of such defects for which it is partly to blame.

RESPONDENT WAS DENIED DUE PROCESS WHEN THE BUREAU OF INTERNAL REVENUE (BIR) FAILED TO CONSIDER ITS PROTEST TO THE PRELIMINARY ASSESSMENT NOTICE (PAN).

Respondent argues that petitioner failed to consider their protest to the PAN as the latter allegedly issued the FLD/FAN on the same day that it received respondent's letter on 15 December 2014.

Contrary to respondent's allegations, evidence on record shows that the FLD/FAN was issued on <u>22 December 2014</u> and *not* on 15 December 2014. What was issued against respondent on 15 December 2014 was a letter from the BIR in response to the First Protest (protest to the PAN) and not the FLD/FAN itself. Section 3 of Revenue

Regulations (**RR**) No. 12-99[107], as amended by RR No. 18-2013[108], provides:

> ...
>
> **SEC. 3.** *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> ...
>
> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**[109]
>
> ...

Respondent received the PAN, dated 26 November 2014, on 03 December 2014. Therefore, it had fifteen (15) days or until 18 December 2014 to reply thereto.

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107 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

108 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

109 Emphasis supplied.

Respondent was able to file its protest to the PAN through a letter dated 12 December 2014, and which the BIR received on 15 December 2014. From 15 December 2014, the BIR had 15 days or until 30 December 2014 to issue the FLD/FAN. On 22 December 2014, the BIR issued an FLD/FAN against respondent. Clearly, respondent's filing of its protests to the PAN and the FLD/FAN's issuance were made within the proper periods.

At first glance, petitioner appears to have complied squarely with the requirements of RR No. 12-99, as amended. *However*, it must be pointed out that in the BIR's letter dated 15 December 2014, it not only acknowledged receipt of respondent's protest, but it also already indicated therein that it could not act favorably on the latter's protest. The letter reads:

> ...
>
> This had reference to your letter in reply to the duly issued Preliminary Assessment Notice (PAN) dated November 26, 2014...
>
> ...
>
> In connection therewith, please be informed that your protest letter **cannot be acted upon favorably** since a Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) shall be issued pursuant to Sec. 3.1.1 of Revenue Regulation[s] No. 18-2013...[110]
>
> ...

True enough, the FLD/FAN denied respondent's protest. The Details of Discrepancies[111] attached to the FLD/FAN was a literal reiteration of the Details of Discrepancies[112] attached to PAN which respondent had protested. There are no indications in the FLD/FAN that would show that respondent's evidence attached to its First Protest (to the PAN) were even considered in arriving at the assessed computation of total tax liabilities amounting to ₱2,876,956.52.

Notwithstanding compliance with the technical requirements of RR No. 12-99, as amended, due process remains of paramount consideration. No less than the Bill of Rights requires that, "[n]o person shall be deprived of life, liberty, or property without due

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110 Emphasis supplied.
111 Supra at note 14.
112 Supra at note 11.

process of law, nor shall any person be denied the equal protection of the laws".[113]

In administrative proceedings, "due process" means an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[114] In *Ray Peter O. Vivo v. Philippine Amusement and Gaming Corporation (Pagcor)*[115] [**Vivo**], the Supreme Court elaborates on the meaning of administrative due process in this wise:

> ...
>
> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.
>
> In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) **a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights;** (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) **a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.**
>
> ...

Vivo enumerates the requirements of administrative due process. To the Court's mind, petitioner, through his agents, have failed to comply with all the above requisites.

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[113] 1987 Philippine Constitution, Article III, Section 1.

[114] F/O *Ledesma v. Court of Appeals, et al.*, G.R. No. 166780, 27 December 2007

[115] G.R. No. 187854, 12 November 2013; Emphasis supplied.

First, petitioner failed to afford respondent a real opportunity to be heard when the BIR's letter dated 15 December 2014 immediately denied any chance of respondent's protest being considered. To be clear, the BIR did not simply deny respondent's protest but it likewise notified the latter (on the same day it received the latter's protest) that its protest "cannot be acted upon favorably".

Second, in immediately striking down respondent's protest, petitioner did not consider respondent's arguments and the supporting evidence it submitted to the BIR. As a result, petitioner could not have possibly arrived at a decision supported by evidence presented for the BIR's consideration. This is demonstrated by the fact that the Details of Discrepancies in the FLD/FAN are but echoes of those previously included in the PAN. It did not, in any way, make reference and neither did it refute respondent's arguments in its protest to the PAN.

As the records also clearly evince, in its protest to the FLD/FAN, respondent raised the same exact issue, *i.e.*, the BIR's failure to consider its arguments or the documents it attached to its protest to the PAN. However, such issue fell on deaf ears when its subsequent protest to the FLD/FAN was not acted upon.

In this respect, the Supreme Court, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[116] (**Avon**), ruled that an opportunity to be heard goes hand in hand with a decision based on the arguments and evidence presented by the taxpayer, to wit:

> ...
>
> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process**

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[116] G.R. No. 201398-99, 03 October 2018; Citations omitted and emphasis supplied.

> **requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> ...
>
> In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature." Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.
>
> ...
>
> "[A] fair and reasonable opportunity to explain one's side" is one aspect of due process. **Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.**
>
> ...

Taking into consideration the above principles, petitioner and his agents could not simply skirt their responsibility to rule on respondent's case on the merits of its claims as the latter was able to file its protest to the PAN within the reglementary period provided in the BIR's own rules.

In sum, the Court *En Banc* finds petitioner's assessment to be wholly null and void for violation of respondent's right to due process.

WHEREFORE, the foregoing premises considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 10 February 2021 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 02 March 2020 and 21 January 2021, respectively, in CTA Case No. 9118, entitled *Rural Bank of Bacnotan (La Union), Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED**.

Petitioner Commissioner of Internal Revenue is further **ENJOINED** from collecting taxes pursuant to the Final Letter of Demand and Final Assessment Notice dated 22 December 2014 subject of this case.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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.

ERLINDA P. UY
Acting Presiding Justice