REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1625
(CTA Case No. 8991)

-versus-

FIRST PHILIPPINE HOLDINGS CORPORATION,
Respondent.

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FIRST PHILIPPINE HOLDINGS CORPORATION,
Petitioner,

CTA EB NO. 1626
(CTA Case No. 8991)

Present:

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 03 2018 1:31 p.m.

x--x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* are consolidated[1] Petitions for Review separately filed by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1625 *(Commissioner of Internal Revenue v. First Philippine Holdings Corporation),* and by First Philippine Holdings Corporation (FPHC), petitioner in CTA EB No. 1626 *(First Philippine Holdings Corporation v. Commissioner of Internal Revenue).*

In CTA EB No. 1625, petitioner CIR is seeking the reversal of the Resolutions dated September 27, 2016 and March 9, 2017 rendered by the Second Division of this Court in CTA Case No. 8991, insofar as both partially granted FPHC's Omnibus Motion for preliminary determination of issue of prescription of assessment and declared that the CIR's right to assess the following: a) deficiency VAT for the 1st and 2nd quarters of 2009; b) deficiency EWT for the months of January to July 2009; c) deficiency WT on compensation for the months of January to July 2009; and d) deficiency FBT for the 1st and 2nd quarters of 2009 had already prescribed.

In CTA EB No. 1626, petitioner FPHC is seeking the partial reversal of the same resolutions, praying that the Court: a) grant the remaining portion of the Omnibus Motion and declare that the CIR's right to assess all alleged deficiency taxes in the FLD/FAN has prescribed; b) declare the right of the CIR to assess FPHC for taxable year 2009, in the aggregate amount of ₱1,555,240,774.37 as already prescribed; and c) declare void *ab initio* the FLD/FAN which imputed deficiency taxes against FPHC in the total amount of ₱1,555,240,774.37.

<u>The Parties</u>

The CIR, petitioner in CTA EB No. 1625, is the duly appointed Commissioner of Internal Revenue, vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code ("Tax Code"). He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

FPHC is a publicly listed domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and registered with the Philippine Stock Exchange. Its office is located at the 6th Floor, Rockwell Business Center, Tower 3, Ortigas Avenue, Pasig City.

[1] CTA EB No. 1626 was consolidated with CTA EB No. 1625, the case bearing the lowest docket number per Minute Resolution issued on April 19, 2017.
[2] Docket, p. 108, par. 4, JSFI, Admitted Facts I.

<u>The Facts[3]</u>

The relevant antecedents, as stipulated[4] by the parties and as borne by the records of the case, are as follows:

On May 18, 2010, FPHC received a copy of Letter of Authority No. LOA-116-2010-00000053 (LOA) dated May 14, 2010[5] authorizing the conduct of an audit of its taxable records for taxable year 2009.[6]

In the course of the audit, FPHC issued four (4) Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code[7] (Waiver/s), as follows:

Date Executed	Expiry Date	Signatory (Petitioner)	Signatory (Respondent) and Date of Acceptance
August 17, 2012[8] (First Waiver)	December 31, 2012	Mr. Francis Giles B. Puno (Treasurer)[9]	Officer-In-Charge Assistant Commissioner for LTS (OIC ACIR) Alfredo V. Misajon; September 6, 2012
November 6, 2012[10] (Second Waiver)	June 30, 2013	Ms. Perla R. Catahan (Comptroller)[11]	OIC ACIR Misajon; November 15, 2012
May 24, 2013[12] (Third Waiver)	December 31, 2013	Ms. Perla R. Catahan (Comptroller)[13]	OIC ACIR Misajon; June 13, 2013
October 3, 2013[14] (Fourth Waiver)	June 30, 2014	Mr. Ramon T. Pagdagdagan (Comptroller)[15]	OIC ACIR Alfredo V. Misajon; October 29, 2013

On June 2, 2014, FPHC received a copy of the Preliminary Assessment Notice (PAN)[16] of even date which assessed FPHC for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on

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[3] As found by the Second Division and as culled from the records of the case.
[4] *Id.* at Note 2, pp. 394-401.
[5] *Id.*, p. 769, Exhibit "P-1".
[6] *Id.*, p. 395, JSFI, par 3.
[7] *Id.*, p. 395, JSFI, par 4.
[8] *Id.*, pp. 881-882, Exhibit "P-7".
[9] *Id.*, pp. 881, Exhibit "P-7-B".
[10] *Id.*, pp. 883-884, Exhibit "P-8".
[11] *Id.*, pp. 883, Exhibit "P-8-B".
[12] *Id.*, pp. 885-886, Exhibit "P-9".
[13] *Id.*, pp. 885, Exhibit "P-9-B".
[14] *Id.*, pp. 887-888, Exhibit "P-10".
[15] *Id.*, pp. 887, Exhibit "P-10-B".
[16] *Id.*, pp. 770-777, Exhibit "P-2".

compensation (WC), fringe benefit tax (FBT), and documentary stamp tax (DST), for the taxable year 2009 in the aggregate amount of One Billion Five Hundred Thirty-Four Million Seven Hundred Thirty-Five Thousand Three Hundred Ninety-Three Pesos and Eighty-Three Centavos (₱1,534,735,393.83).[17]

On June 17, 2014, FPHC filed its Reply[18] dated June 16, 2014 to the PAN.

On June 30, 2014, FPHC received a copy of the Formal Letter of Demand with Final Assessment Notice[19] (FLD/FAN) dated June 27, 2014 finding it liable for deficiency income tax, VAT, EWT, WC, FBT, DST and corresponding penalties and interest in the aggregate amount of One Billion Five Hundred Fifty-Five Million Two Hundred Forty Thousand Seven Hundred Seventy-Four Pesos and Thirty-Seven Centavos (₱1,555,240,774.37).[20]

On July 25, 2014, FPHC filed its Protest to Assessments[21] of even date in the form of a request for reconsideration. On December 10, 2014, FPHC filed its Supplemental Protest[22].

FPHC then filed its Petition for Review[23] on February 20, 2015. The CIR filed his Answer[24] on May 19, 2015.

On July 6, 2015, FPHC filed its Omnibus Motion[25] praying for an early resolution on the issue of prescription prior to conducting a full-blown trial on the merits of the case, which was granted[26] by the Court in Division in open court on July 9, 2015.

Trial ensued and the parties presented their respective evidence on the issue of prescription.

FPHC filed its Memorandum (Re: Issue of Prescription for Petitioner)[27] on June 23, 2016 while the CIR filed his Memorandum[28] on July 13, 2016.

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[17] *Id.*, p. 395, JSFI, par. 5.
[18] *Id.*, pp. 781-796, Exhibit "P-3".
[19] *Id.*, pp. 797-813, Exhibit "P-4".
[20] *Id.*, pp. 395-396, JSFI, par. 6.
[21] *Id.*, pp. 814-863, Exhibit "P-5".
[22] *Id.*, pp. 864-880, Exhibit "P-6".
[23] *Id.*, pp. 6-81.
[24] *Id.*, pp. 340-346.
[25] *Id.*, pp. 374-379.
[26] *Id.*, p. 381, Minutes of the hearing.
[27] *Id.*, pp. 1072-1115.
[28] *Id.*, pp. 1117-1124.

The Ruling of the Court in Division on the Issue of Prescription

On September 27, 2016, the Court in Division promulgated the assailed Resolution partially granting FPHC's Omnibus Motion for the early resolution of the issue of prescription, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, petitioner's **Omnibus Motion** is **PARTIALLY GRANTED**. Accordingly, respondent's right to assess the following: (1) deficiency VAT for the 1st and 2nd quarters of 2009; (2) deficiency EWT for the months of January to July 2009; (3) deficiency WT on compensation for the months of January to July 2009; and (4) deficiency FBT for the 1st and 2nd quarters of 2009 had already prescribed.
>
> Set this case for hearing on November 7, 2016 at 9:00 a.m. for the presentation of evidence for the petitioner to determine its liability for the remaining tax deficiency assessments for the taxable year 2009.
>
> **SO ORDERED**."

Both parties filed their respective Motions for Partial Reconsideration.[29] In a Resolution dated March 9, 2017, the Court in Division denied both motions, thus:

> "**WHEREFORE,** in light of the foregoing considerations, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Partial Reconsideration (Re: Decision dated September 27, 2016)** are both **DENIED** for lack of merit.
>
> On the other hand, set this case on April 17, 2017 at 9:00 a.m. for the presentation of the evidence for the petitioner to determine its liability for the remaining deficiency taxes for the taxable year 2009.
>
> **SO ORDERED."**

[29] FPHC filed its Motion for Partial Reconsideration on October 18, 2016, while the CIR filed his Motion for Partial Reconsideration on October 14, 2016.

Within the extended period granted by the Court *en banc*[30], on April 11, 2017, the CIR timely filed his Petition for Review, docketed as CTA EB No. 1625.[31]

The Court *en banc* likewise granted FPHC an extended period of up to April 13, 2017 to file its Petition for Review.[32] FPHC filed its Petition for Review on April 17, 2017 which the Court considers timely filed as April 13, 2017 fell on a holiday, Maundy Thursday, and April 17, 2017, a Monday, was the next earliest available date for filing its Petition.

On April 19, 2017, FPHC's Petition for Review was consolidated with the CIR's Petition for Review, the case bearing the lower docket number, via Minute Resolution of the Court *en banc.*[33]

In a Resolution dated June 20, 2017,[34] both respondents were ordered to file their respective Comments to the Petition.

FPHC filed its Comment[35] on July 20, 2017 while the CIR failed to file his Comment within the period given, as verified by the Judicial Records Division in a Records Verification Report dated August 14, 2017.[36]

On September 5, 2017, the Court *en banc* resolved to give due course to the petitions and the cases were submitted for decision.[37]

The Assignments of Errors

The CIR's Petition for Review assigns two errors in the assailed Resolutions, thus: a) that the Court in Division erred in ruling that the applicable period to assess is three years and not ten years despite the fact that FPHC under-declared its sales and deductions by more than thirty-percent (30%); and, b) that the Court in Division likewise erred in ruling that the collection of withholding taxes is covered by the three-year period to assess.

[30] *Rollo,* CTA EB No. 1625, p. 6.
[31] *Id.*, pp. 4-48.
[32] *Rollo,* CTA EB No. 1626, p. 7.
[33] *Id.* at Note 30, p. 52.
[34] *Id.*, pp. 54-56.
[35] *Id.*, pp. 57-66.
[36] *Id.*, p. 67.
[37] *Id.*, pp. 69-70.

On the other hand, FPHC's Petition for Review assigns one main error to the assailed Resolutions and claims that the Court in Division erred in not declaring the remaining deficiency taxes as also prescribed. It argues that the period for the CIR to assess deficiency taxes for Taxable Year 2009 has already prescribed pursuant to Section 203 and 222(B) of the Tax Code ; that the factual antecedents of its case are not on all fours with the *Next Mobile* case; that even assuming that the *Next Mobile* case is new precedent, that the doctrine established in the *Kudos Metal Case* cannot be overturned; and that the Court in Division based its rulings solely on the alleged infirmities of the waivers and failed to consider FPHC's other arguments.

The Ruling of the Court

We deny the petitions.

The issues raised in the petition are mere reiterations of the same issues which had already been duly considered, passed upon and extensively discussed by the Second Division in the assailed Resolutions. Nevertheless, for emphasis, we will discuss at length, once again, the demerits of the parties' arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Before discussing the merits of the arguments of the parties, it is crucial to establish, for context, not only the dates of filing of FPHC's returns, but also the corresponding dates within which the CIR should assess FPHC for deficiency taxes for taxable year 2009.

In determining the last day to assess, the Court subscribes to Article 13 of the Civil Code which states:

> "Art. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days of twenty-four hours; and nights from sunset to sunrise.
>
> If months are designated by their name, they shall be computed by the number of days which they respectively have.
> In computing a period, the first day shall be excluded, and the last day included."

A review of the assailed Resolution dated September 27, 2016 shows that several corrections have to be made in the summary of the dates of filing of

FPHC's relevant returns and the corresponding dates within which the CIR should have assessed FPHC for deficiency taxes to conform to Art. 13 of the Civil Code, to wit:

<u>2009 Income Tax Return</u>

Period Covered	Date Filed	Last Day to File Return[38]	Last Day to Assess
Annual Income Tax Return[39]	April 14, 2010	April 15, 2010	**April 14, 2013*** *April 14, 2013 fell on a Sunday, therefore the next working day, **April 15, 2013**, was effectively the last day to assess.

<u>2009 Quarterly VAT Returns</u>

Period Covered	Date Filed	Last Day to File Return[40]	Last Day to Assess
January to March (1st Quarter)[41]	April 27, 2009	April 25, 2009	**April 26, 2012**
April to June (2nd Quarter)[42]	July 23, 2009	July 25, 2009	**July 24, 2012**
July to September (3rd Quarter)[43]	October 26, 2009	October 25, 2009	**October 25, 2012**
October to December (4th Quarter)[44]	February 3, 2010 (amended)	January 25, 2010	**February 2, 2013*** * February 2, 2013 fell on a Saturday, therefore **February 4, 2013**, a Monday, was effectively the last day to assess.

<u>2009 EWT Returns</u>

[38] Pursuant to Section 77 of the NIRC of 1997, as amended, a corporate taxpayer shall file its final adjustment return (annual income tax return) on or before the fifteenth (15th) day of April.
[39] *Id.* at Note 2, pp. 889-891, Exhibit "P-11".
[40] Section 114(A) of the NIRC of 1997 requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.
[41] *Id.* at Note 2, pp. 896-897, Exhibit "P-14".
[42] *Id.*, pp. 902-903, Exhibit "P-17".
[43] *Id.*, pp. 908-909, Exhibit "P-20".
[44] *Id.*, pp. 914-915, Exhibit "P-23".

Period Covered	**Date Filed**	**Last Day to File Return**[45]	**Last Day to Assess**
January 2009[46]	February 11, 2009	February 15, 2009	**February 15, 2012**
February 2009[47]	March 11, 2009	March 15, 2009	**March 14, 2012**
March 2009[48]	April 13, 2009	April 15, 2009	**April 14, 2012*** * April 14, 2012 fell on a Saturday, therefore **April 16, 2012**, a Monday, was effectively the last day to assess.
April 2009[49]	May 7, 2009	May 15, 2009	**May 14, 2012**
May 2009[50]	June 9, 2009	June 15, 2009	**June 14, 2012**
June 2009[51]	July 8, 2009	July 15, 2009	**July 14, 2012*** * July 14, 2012 fell on a Saturday, therefore **July 16, 2012**, a Monday, was effectively the last day to assess.
July 2009[52]	August 11, 2009	August 15, 2009	**August 14, 2012**
August 2009[53]	September 10, 2009	September 15, 2009	**September 14, 2012**
September 2009[54]	October 12, 2009	October 15, 2009	**October 14, 2012*** *October 14, 2012 fell on a Sunday, therefore the next working day, **October 15, 2012**, was effectively the last day to assess.
October 2009[55]	November 11, 2009	November 15, 2009	**November 14, 2012**
November 2009[56]	December 11, 2009	December 15, 2009	**December 14, 2012**
December 2009[57]	January 20, 2010 (amended)	January 20, 2010	**January 19, 2013***

[45] Pursuant to Revenue Regulations (RR) No. 26-02, return must be filed on or before the fifteenth (15th) day of the month following the month of withholding.
[46] *Id.* at Note 2, pp. 916-917, Exhibit "P-24".
[47] *Id.*, pp. 918-919, Exhibit "P-25".
[48] *Id.*, pp. 920-921, Exhibit "P-26".
[49] *Id.*, pp. 922-923, Exhibit "P-27".
[50] *Id.*, pp. 924-925, Exhibit "P-28".
[51] *Id.*, pp. 926-927, Exhibit "P-29".
[52] *Id.*, pp. 928-929, Exhibit "P-30".
[53] *Id.*, pp. 930-931, Exhibit "P-31".
[54] *Id.*, pp. 932-933, Exhibit "P-32".
[55] *Id.*, pp. 934-935, Exhibit "P-33".
[56] *Id.*, pp. 936-937, Exhibit "P-34".
[57] *Id.*, pp. 938-939, Exhibit "P-35".

			* January 19, 2013 fell on a Saturday, therefore **January 21, 2013**, a Monday, was effectively the last day to assess.

2009 WT on Compensation Returns

Period Covered	Date Filed	Last Day to File Return[58]	Last Day to Assess
January 2009[59]	February 11, 2009	February 15, 2009	**February 15, 2012**
February 2009[60]	March 11, 2009	March 15, 2009	**March 14, 2012**
March 2009[61]	April 13, 2009	April 15, 2009	**April 14, 2012*** * April 14, 2012 fell on a Saturday, therefore **April 16, 2012**, a Monday, was effectively the last day to assess.
April 2009[62]	May 7, 2009	May 15, 2009	**May 14, 2012**
May 2009[63]	June 9, 2009	June 15, 2009	**June 14, 2012**
June 2009[64]	July 8, 2009	July 15, 2009	**July 14, 2012*** * July 14, 2012 fell on a Saturday, therefore **July 16, 2012**, a Monday, was effectively the last day to assess.
July 2009[65]	August 10, 2009	August 15, 2009	**August 14, 2012**
August 2009[66]	September 9, 2009	September 15, 2009	**September 14, 2012**
September 2009[67]	October 13, 2009 (amended)	October 15, 2009	**October 14, 2012*** *October 14, 2012 fell on a Sunday, therefore the next working day, **October 15, 2012**, was

[58] Pursuant to RR No. 26-02, return must be filed on or before the fifteenth (15th) day of the month following the month of withholding.
[59] *Id.* at Note 2, pp. 940-941, Exhibit "P-36".
[60] *Id.*, pp. 942-943, Exhibit "P-37".
[61] *Id.*, pp. 944-945, Exhibit "P-38".
[62] *Id.*, pp. 946-947, Exhibit "P-39".
[63] *Id.*, pp. 948-949, Exhibit "P-40".
[64] *Id.*, pp. 950-951, Exhibit "P-41".
[65] *Id.*, pp. 952-953, Exhibit "P-42".
[66] *Id.*, pp. 954-955, Exhibit "P-43".
[67] *Id.*, pp. 956-957, Exhibit "P-44".

			effectively the last day to assess.
October 2009[68]	November 10, 2009	November 15, 2009	**November 14, 2012**
November 2009[69]	December 9, 2009	December 15, 2009	**December 14, 2012**
December 2009[70]	January 20, 2010 (amended)	January 20, 2010	**January 19, 2013*** * January 19, 2013 fell on a Saturday, therefore **January 21, 2013**, a Monday, was effectively the last day to assess.

2009 FBT Returns

Period Covered	Date Filed	Last Day to File Return[71]	Last Day to Assess
1st Quarter[72]	April 29, 2009 (amended)	April 15, 2009	**April 28, 2012*** * April 28, 2012 fell on a Saturday, therefore **April 30, 2012**, a Monday, was effectively the last day to assess.
2nd Quarter[73]	July 8, 2009	June 15, 2009	**July 7, 2012*** * July 7, 2012 fell on a Saturday, therefore **July 9, 2012**, a Monday, was effectively the last day to assess.
3rd Quarter[74]	October 12, 2009	October 10, 2009	**October 11, 2012**
4th Quarter[75]	January 15, 2010	January 10, 2010	**January 14, 2013**

[68] *Id.*, pp. 958-959, Exhibit "P-45".
[69] *Id.*, pp. 960-961, Exhibit "P-46".
[70] *Id.*, pp. 962-963, Exhibit "P-47".
[71] Pursuant to RR No. 04-02, return must be filed on or before the fifteenth (15th) of the month following the calendar quarter in which the fringe benefits were granted.
[72] *Id.* at Note 2, pp. 964-965, Exhibit "P-48".
[73] *Id.*, pp. 966-967, Exhibit "P-49".
[74] *Id.*, pp. 968-969, Exhibit "P-50".
[75] *Id.*, pp. 970-971, Exhibit "P-51".

As discussed by the Court in Division, the period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads:

> '"Sec. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Sec. 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.'

It is clear from the foregoing that internal revenue taxes must be assessed within three (3) years from the date of actual filing of the tax return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

However, in case of false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed and/or collected at any time within ten (10) years after the discovery of the falsity, fraud or omission. Section 222(a) of the NIRC of 1997, as amended, states:

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

shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. x x x"

However, the the First Waiver[76] in this case was issued on **<u>August 17, 2012</u>** and we find no reason persuasive enough to disturb the findings of the Court in Division that **even prior to the issuance of such Waiver**, the right of respondent to assess petitioner had already prescribed with respect to the following taxes:

(1) deficiency VAT for the 1st and 2nd quarters of 2009;
(2) deficiency EWT for the months of January to July 2009;
(3) deficiency WT on compensation for the months of January to July 2009; and
(4) deficiency FBT for the 1st and 2nd quarters of 2009.

<u>2009 Quarterly VAT Returns</u>

Period Covered	Date Filed	Last Day to File Return	Last Day to Assess
January to March (1st Quarter)	April 27, 2009	April 25, 2009	**April 26, 2012**
April to June (2nd Quarter)	July 23, 2009	July 25, 2009	**July 24, 2012**

<u>2009 EWT Returns</u>

Period Covered	Date Filed	Last Day to File Return	Last Day to Assess
January 2009	February 11, 2009	February 15, 2009	**February 15, 2012**
February 2009	March 11, 2009	March 15, 2009	**March 14, 2012**
March 2009	April 13, 2009	April 15, 2009	**April 14, 2012*** * April 14, 2012 fell on a Saturday, therefore **April 16, 2012**, a Monday, was effectively the last day to assess.

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[76] *Id.*, pp. 881-882, Exhibit "P-7".

April 2009	May 7, 2009	May 15, 2009	**May 14, 2012**
May 2009	June 9, 2009	June 15, 2009	**June 14, 2012**
June 2009	July 8, 2009	July 15, 2009	**July 14, 2012*** * July 14, 2012 fell on a Saturday, therefore **July 16, 2012**, a Monday, was effectively the last day to assess.
July 2009	August 11, 2009	August 15, 2009	**August 14, 2012**

2009 WT on Compensation Returns

Period Covered	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
January 2009	February 11, 2009	February 15, 2009	**February 15, 2012**
February 2009	March 11, 2009	March 15, 2009	**March 14, 2012**
March 2009	April 13, 2009	April 15, 2009	**April 14, 2012*** * April 14, 2012 fell on a Saturday, therefore **April 16, 2012**, a Monday, was effectively the last day to assess.
April 2009	May 7, 2009	May 15, 2009	**May 14, 2012**
May 2009	June 9, 2009	June 15, 2009	**June 14, 2012**
June 2009	July 8, 2009	July 15, 2009	**July 14, 2012*** * July 14, 2012 fell on a Saturday, therefore

			July 16, 2012, a Monday, was effectively the last day to assess.
July 2009	August 10, 2009	August 15, 2009	**August 14, 2012**

<u>2009 FBT Returns</u>

Period Covered	Date Filed	Last Day to File Return[77]	Last Day to Assess
1st Quarter	April 29, 2009 (amended)	April 15, 2009	**April 28, 2012*** * April 28, 2012 fell on a Saturday, therefore **April 30, 2012**, a Monday, was effectively the last day to assess.
2nd Quarter	July 8, 2009	June 15, 2009	**July 7, 2012*** * July 7, 2012 fell on a Saturday, therefore **July 9, 2012**, a Monday, was effectively the last day to assess.

Therefore, the assessments issued during the abovementioned periods are null and void due to prescription.

False or Fraudulent Return Must be Proven for Extended Prescriptive Period to Apply

The CIR, in his Petition, argues that since FPHC filed a false and fraudulent return, the application of the ten (10) year prescriptive period counted from the discovery of such falsity, fraud, or omission is warranted. As the CIR's reckoning point of his discovery is in 2014, during the audit examination of FPHC, he argues that his right to assess has not prescribed.

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[77] Pursuant to RR No. 04-02, return must be filed on or before the fifteenth (15th) day of the month following the calendar quarter in which the fringe benefits were granted.

The falsity that the CIR refers to is the FPHC's substantial under-declaration of its sales.

Section 248(B) of the Tax Code states in part that:

> "x x x [A] **substantial underdeclaration** of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute prima facie evidence of a false or fraudulent return**: Provided, further, That failure to report sales, receipts or income in an **amount exceeding thirty percent (30%) of that declared per return**, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein."

According to the CIR, FPHC's substantial under-declaration became apparent after its audit, *viz:*

Per Audit	Per Return	Under-declaration	RATE
VATable Income			
137,126,665.07	69,404,812.47	67,721,852.60	49.39%
EWT			
34,385,604.86	22,715,045.89	11,634,558.97	33.84%
WTC			
65,838,758.30	0	65,838,758.30	100%
FBT			
6,883,123.55	0	6,883,123.55	100%

The records show, however, that the CIR raised the allegation regarding FPHC substantial under-declaration for the first time in its Motion for Reconsideration of the Resolution dated September 27, 2016. More importantly, this allegation is also unsupported by evidence.

The Court in Division discussed the standard to be met in upholding an allegation of fraud, thus:

> "Moreover, in the case of *Commissioner of Internal Revenue vs. Javier, Jr., et al.*[78], citing the case of *Aznar vs. Court of Tax Appeals, et*

[78] G.R. No. 78953, July 31, 1991.

al.[79], the Supreme Court discussed fraud in relation to the filing of tax return, as follows:

> 'In *Aznar v. Court of Tax Appeals,* fraud in relation to the filing of income tax return was discussed in this manner:
>
> > ... The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by law. It must amount to intentional wrong-doing with the sole object of avoiding the tax. It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.
>
> Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most, create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion."

Using this standard, *We* agree with the finding of the Court in Division that the CIR's figures/computations showing FPHC's substantial under declaration of sales, receipts or income in an amount exceeding thirty percent (30%), without any other accompanying supporting evidence, is insufficient to establish the fraud or falsity that would warrant an extended prescriptive period.

Withholding Taxes are Subject to the Three-Year Prescriptive Period under Sec. 203 of the Tax Code

The CIR likewise argues, in his Petition, that withholding taxes are not barred by prescription because the government's cause of action against FPHC

[79] G.R. No. L-20569, August 23, 1974.

is as a withholding agent, not for the collection of the tax, but for the enforcement of the withholding provision of Section 57 of the Tax Code.

Accordingly, the tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer.[80]

The CIR's argument is based on Article 1113 of the Civil Code which states that "[a]ll things which are within the commerce of men are susceptible of prescription, unless otherwise provided. **Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.**" The argument presupposes that the monies being held by FPHC, by virtue of its being a withholding agent, is not a tax due on FPHC but the collection of property of the government that it merely held in trust and, hence, not subject to prescription.

However, this argument overlooks Article 1115 of the Civil Code under the same Title which states:

> "Art. 1115. The provisions of the present Title are understood to be without prejudice to what in this Code or **in special laws is established with respect to specific cases of prescription.**"

In this context, the Tax Code's provisions on prescription is the special law that the above-quoted article refers to.

Section 203 of the Tax Code mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later, thus:

> "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.

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[80] *Commissioner of Internal Revenue v. Bank of Commerce,* G.R. No. 149636, June 8, 2005.

> For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

In this regard, Section 21 of the Tax code enumerates all internal revenue taxes, as follows:

> **SEC. 21.** ***Sources of Revenue-*** The following taxes, fees and charges are deemed to be **national internal revenue taxes:**
>
> (a) **Income tax;**
> (b) Estate and donor'staxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. *(Emphasis supplied)*

We agree with the Court in Division's finding that since the imposition of withholding tax is found under the title on "Income Tax", the same is considered as an internal revenue tax which is required to be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.

Defective Waivers Gives Rise to the Application of the *Next Mobile* Doctrine

Earlier on in this Decision, *We* discussed the assessments that have already prescribed. The remaining assessments are the subject of four Waivers that have been executed by both parties. The Court in Division declared these four Waivers as valid, despite being defective, following the doctrine in *Commissioner of Internal Revenue v. Next Mobile, Inc.*[81] which shall be referred to as the *Next Mobile* case hereon after.

At the heart of the *Next Mobile* case is the doctrine of in *pari delicto* or "in equal fault", which connotes that the two parties to a controversy are equally

[81] G.R. No. 212285, December 7, 2015.

culpable and, as such, they hall have no action against each other. As a consequence of being in pari delicto, the parties therefore cannot resort to the courts based on the principle that parties must come to court with clean hands.

FPHC argues that, while it acknowledges and agrees with the findings of the Court in Division that the waivers were indeed defective, it is not on all fours with the *Next Mobile* case as it had no conscious effort to issue what it knows to be defective Waivers in order to take advantage of the extended period to provide documentation and evidence to support its defense against the assessments.

In relation to Section 222(b) quoted earlier in the Decision, Revenue Memorandum Order (RMO) No. 20-90[82], as amended by Revenue Delegation Authority Order (RDAO) No. 05-01[83], provides the procedures that should be followed for the proper execution of the Waiver of the Statute of Limitations.

In RMO No. 20-90, the CIR laid down the procedures in executing a Waiver as follows:

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

[82] Subject: Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code, April 4, 1990.
[83] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, August 2, 2001.

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

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

xxx xxx xxx

3. Commissioner – For tax cases involving more than P1M

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. **The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in**

prescription of the right to assess/collect shall be administratively dealt with." *(Emphasis supplied)*

On the other hand, in RDAO 05-01, the CIR details the following authorities who may sign and accept the Waivers:

"I. Revenue Officials Authorized to Sign the Waiver

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

For National Office cases

Designated Revenue Official

1. Assistant Commissioner (ACIR), Enforcement Service - For tax fraud and policy cases

2. ACIR, Large Taxpayers Service - For large taxpayers cases other than those cases falling under Subsection B hereof

3. ACIR, Legal Service - For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of *Subpoena Duces Tecum*

4. ACIR, Assessment Service (AS) - For cases which are pending in or subject to review or approval by the ACIR, AS

5. ACIR, Collection Service -For cases pending action in the Collection Service

B. For cases in the Large Taxpayers District Office (LTDO)

The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession.

/w

C. For Regional cases

Designated Revenue Official

1. Revenue District Officer — Cases pending investigation/ verification/reinvestigation in the Revenue District Offices

2. Regional Director — Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall 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. 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. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized." *(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[84], the Supreme Court outlined the procedure for the proper execution of a waiver, to wit:

"1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after __ 19 _', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

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

[84] G.R. No. 192173, July 29, 2015.

3. The waiver should be duly notarized.

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

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

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

Using the above-mentioned standards, the Court in Division found that FPHC executed Waivers through its Treasurer/Comptroller who had allegedly no authority to sign the Waivers thereby violating RMO No. 20-90 which states that in the case of a corporate taxpayer, the waiver must be signed by its responsible officials, and RDAO 05-01 which requires the presentation of a written and notarized authority to the BIR.

The Court in Division also found the BIR remiss in its duties as it did not ensure that the waiver was duly accomplished and signed by the taxpayer or his authorized representative before the authorized revenue official affixed his signature to signify acceptance of the same. The Waivers were also accepted by the BIR, despite the fact that they were executed without the notarized written authority allowing the signatories to sign on behalf of FPHC, in violation of RDAO 05-01.

In finding the parties in pari delicto, both being equally at fault, the Court in Division applied the doctrine pronounced in the *Next Mobile* case, thus:

"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.**" (*Emphasis ours*)

FPHC contests that finding and wants this Court to believe that unlike in the *Next Mobile* case, it did not ask for the extended period to have the opportunity to gather and submit documents to substantiate its claims before the BIR during investigation or to be able to postpone the payment of taxes as well as contest and negotiate the assessment against it. Instead, it claims it was the BIR that requested the execution of the contested Waivers, even quoting the testimony of Revenue Officer Olivia Sison, thus:

"ATTY. TUAL	Yes, okay. Do you also affirm that the contents for these four (4) Waivers came from the BIR?
MS. SISON	Format, yes.

x x x x x x x x x

JUSTICE CASTAÑEDA, JR.	All right. Why did it take you so long before you issued the Preliminary Assessment Notice?

MS. SISON — It's because sir, **during that time, there are some documents that we need that <u>the taxpayer did not provide for us</u>**. So because that is a **conglomerate audit**, so we need the documents. **That's why we are waiting for the documents, and that's why it takes us long for the documentation.**"[85] *(Emphasis supplied)*

A conglomerate has been defined in Revenue Memorandum Order (RMO) No. 36-2010 as a group of corporations with diversified business activities in varied industries, whereby the operations of such businesses are controlled and managed by the management of a parent corporate entity. Considering that the audit is focused on related-party transactions, both FPHC and the BIR must go through the audit on an organized, joint and coordinated basis.

From the excerpt of Ms. Sison's testimony above, which FPHC quoted in its Petition, it is glaringly apparent that the audit proceeded at a slower pace than usual because FPHC did not give the documents the BIR needed for the audit. This is something FPHC did not even bother to rebut in its arguments. The extended period was necessary to give FPHC a fair and comprehensive audit which obviously redounded to its benefit. Instead, FPHC now claims that it did not need the extended period to furnish the BIR documents despite positive testimony on record that it could not timely give the BIR the same.

In a bid to prove that it did not incur any fault for the *Next Mobile* case to apply, FPHC shifts the blame to the BIR for not verifying the authority of its Treasurer – in the case of the First Waiver – and its Comptrollers – in the case of the Second, Third, and Fourth Waivers, prior to accepting the Waivers. FPHC argues that the Waivers are defective because the signatories to the Waivers were not armed with a proper Board Resolution. In fact, it emphasizes the importance of a Board Resolution in its Petition by quoting its witness, Ms. Roque, thus:

"JUSTICE CASTAÑEDA JR. — Let me clarify. As financial comptroller, are you authorized to face BIR officials?

[85] TSN dated May 4, 2016, pp. 7 and 10.

MS. ROQUE	Your Honor, facing them is different from the case that I cited in my affidavit, just the issuance of a Waiver. So I think as a matter of talking with the BIR, I could speak with them **<u>but in terms of binding my company, to sign the waiver, I definitely need authorization.</u>**

x x x x x x x x x

ATTY. SOMERA, JR.	So just to be clear on your answer. The Board of Directors does not necessarily issue a Resolution for you to represent the company when you speak with the representatives from the BIR?
MS. ROQUE	I am not very clear on the question because there were cases where we speak with certain people but we don't necessarily need an authorization from the Board. But as I said, **when we bind the corporation to something as big as an Assessment, to the potential or a risk to the company as big as this, then we need to seek authorization from the Board**. Because as far as I know, based on my experiences in the corporation, all authorities emanated from the Board, it is never implied.

x x x x x x x x x

ATTY. SOMERA JR. — But it is one of the functions of a Comptroller to represent the company?

MS. ROQUE — Yes but as I have said, if you are going to **bind the company with a potential risk as big as this, the magnitude of this case speaks for itself that we need a Board Resolution** for any contract, as a matter of fact."[86] *(Emphasis supplied)*

In its Petition, FPHC goes so far as to argue that, for most, if not all corporate transactions, it is standard practice in this jurisdiction for one party to request for a Secretary's Certificate attesting to the approval of resolutions by the Board of Directors to the transaction contemplated, as well as to the designation of an authorized representative who may bind the corporation by signing the contracts or transaction documents.

While the Court agrees to what FPHC characterizes as "standard practice", the Court also notes that it goes both ways. If the practice was so standard that one representing the corporate entity would be requested to show his or her authority to bind the company; then it would be standard practice as well to prepare to present those documents embodying the authority granted so that it would be ready when asked for.

The BIR relied on the presumed authority of FPHC's Treasurer and Comptrollers when they signed the Waivers. The Treasurer and Comptroller of a company whose profits are so gargantuan that the alleged tax deficiency – and this is just the deficiency – amounts to an alleged billion and a half pesos would be presumed to know the risks and consequences to their career for carelessly binding the company without the requisite authority similar to that testified to by Ms. Roque; they would be presumed to know the "standard practice". The Treasurer and Comptroller of a company as big as FPHC holds managerial level positions. They are presumed to be competent enough to know the chain of command within their organization as they both have bosses to report to. FPHC, as well, is presumed to hire competent individuals for these managerial positions in the ordinary course of business.

[86] TSN dated September 7, 2015, pages 13 to 14, and 16.

An internal revenue audit is not a laughing matter. It does not happen every day and millions of the corporation's monies – billions, in this case – is at stake. That this happened four times, in the case of the Four Waivers, each being signed by FPHC employees who were all unaware of the "standard practice" and whom FPHC claims that each of whom did not know enough to stay within the limits of their authority and to not bind the corporation without the requisite authority is just incredible.

In its continuous bid to wash its hands clean, FPHC claims that the Waivers are defective because OIC-ACIR Alfredo V. Misajon, the representative of the BIR who accepted the Waivers, was not authorized to sign the same under RDAO 5-01, being a mere OIC.

In support of its argument, FPHC cites CSC Resolution No. 93-5026 which cited *Aytona v. Castillo, et. al.*[87] (*Aytona* case) wherein it was ruled that "a designated Officer-in-Charge does not exercise powers involving discretion of the regular incumbent. The rights and privileges of the latter do not normally descend upon the former unless specifically stated in the designation." Therefore, FPHC argues, only the ACIR-LTS can sign and accept waivers for large taxpayers' cases.

The Court finds the *Aytona* case inapplicable to the case at bar. *Aytona* was basically a quo warranto case that involved mass ad interim appointments (three-hundred and fifty), issued in the last hours of an outgoing Chief Executive - President Carlos P. Garcia. Among those "midnight appointments" was the appointment of Dominador R. Aytona as ad interim Governor of the Central Bank. When President-elect Diosdado Macapagal assumed office, he issued Administrative Order No. 2 recalling, withdrawing, and cancelling all ad interim appointments made by President Garcia after he had been proclaimed elected. Thereafter, President Macapagal appointed Andres V. Castillo as ad interim Governor of the Central Bank.

It is against this backdrop that the Supreme Court pronounced that when President Macapagal was proclaimed President-elect, President Garcia held the position of President merely in a "caretaker" capacity and could not issue those midnight appointments as the discretion was reserved to the President-elect. Administrative Order No. 2 was then upheld.

FPHC also takes issue with RMO No. 9-2016 which proclaimed that *"internal revenue personnel holding positions in an OIC capacity shall exercise authority and discharge duties and assume responsibilities as if they are holding the employment item for the*

[87] G.R. No. L-19313, January 19, 1962.

particular office". FPHC claims that this argument cannot cloak OIC-ACIR Misajon with authority as the RMO was only issued on March 10, 2016; long after the events of the case transpired and cannot be given retroactive effect in accordance with Section 246 of the Tax Code on non-retroactivity of rulings.

That RMO-9-2016 was issued long after the events of the case transpired is of no moment.

The designation of OIC-ACIR Misajon, as such, was made under the principles of agency, under Title X of the Civil Code which supersedes RMO 9-2016 and even the Tax Code itself. With the Chief Executive as the principal of all his cabinet members, including the CIR, the CIR then has the power to designate sub-agents in accordance with Section 7 of the Tax Code.

Section 7 of the Tax Code sheds light on what powers the CIR can delegate, thus:

> "SEC. 7. Authority of the Commissioner to Delegate Power. - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That **the following powers of the Commissioner <u>shall not be delegated</u>**:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation

> board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

A basic precept of statutory construction is that the express mention of one person, thing, act, or consequence excludes all others, as expressed in the familiar maxim *expression union est exclusion alterius*. Thus, not being among the powers that the CIR is prohibited from delegating, the act of designating an OIC who can accept waivers on behalf of the BIR is allowed.

Furthermore, OIC-ACIR Misajon's actions of accepting the waiver, such as in this case, may be ratified by his principal, the CIR which he has obviously done so by the mere act of pursuing this case. The Civil Code provisions on agency, under the hierarchy of laws, holds greater sway than CSC Resolution No. 93-5026. As discussed earlier, the cited *Aytona* case lacks relevance as it is not on all fours with the case at bar.

Given the foregoing, the Court upholds the finding of the Court in Division that the *Next Mobile* case is applicable to the present case since both parties in this case are *in pari delicto* or in equal fault and that petitioner was guilty of estoppel as it did not raise any objection against the validity of the four (4) waivers until it was assessed taxes and penalties by the BIR.

Non-conversion of LOA to eLA and Investigation and Audit Lasting More than 120 Days Does Not Invalidate the LA

Finally, FPHC argues that the non-conversion of the LOA dated May 14, 2010 to an electronic Letter of Authority (eLA) as mandated by RMO No. 69-2010 coupled with the fact that the investigation and audit lasted more than 120 days invalidates that LOA previously issued. FPHC then comes to the conclusion that a valid assessment cannot come from an invalid LOA.

RMO No. 69-2010 requires that all LOAs shall be retrieved and replaced with new electronic letters of authority, as follows:

> "6. **All LAs,** whether manual or electronic, **issued from March 1, 2010 covering cases for 2009 and other taxable years,** as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, **shall be retrieved and replaced with the new eLA form** (BIR Form No. 1966).
>
> 7. All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation, **subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order."**

RMO No. 69-2010 issued on August 11, 2010 prescribes the guidelines on the issuance of electronic Letters of Authority (eLAs), Tax Verification Notices (TVNs) and Memoranda of Assignment (MOA).

We agree with the Court in Division's finding that nowhere in RMO No. 69-2010 is it stated that the conduct of the audit pursuant to the previously-issued manual LOA will be invalidated absent immediate compliance with the retrieval and replacement of eLAs. Also, RMO No. 69-2010 does not state that the replacement of eLAs is a precondition for the continuance of the audit investigation. In fact, Item 9 of Heading III thereof states:

> "9. TVNs/MOA/Referral Memos issued for the period March 1, 2010 up to the present should all be retrieved and converted to the appropriate documents to be issued under this Order (e.g. LAs issued for estate should be converted to TVN, TVN issued for Donation or other ONETT transactions should be converted to MOA). The replacement eLA/TVNs/MOA should bear the current date but should refer to the investigation authority that preceded it, and have such cancelled document as an attachment. **Though currently dated, the replacement eLA/TVN/MOA will thus be deemed as issued at the same date with the preceding document <u>and will not nullify the investigation or proceedings conducted under the authority of the previously issued document</u>.**"

However, Section 2 of Republic Act No. 1125,[88] as amended by Republic Act No. 9503, provides:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* -
>
> xxx xxx xxx
>
> The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division **but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases** or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level. *(Emphasis supplied)*

Likewise, Section 3, Rule 2 of the RRCTA states that the presence at the deliberation of a simple majority of the justices present is necessary to promulgate a decision in all other cases. These include cases where the Court *en banc* decides whether or not to assume jurisdiction over the same. Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed, thus:

> "Sec. *3. Court en banc; quorum and voting.* - The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc.* The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc.* The presence at the deliberation and the affirmative vote of five members of the Court *en banc* shall be necessary to reverse a decision of a Division but **only a simple majority of the justices present to promulgate a resolution or decision in all other cases.** Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied." *(Emphasis supplied)*

In the deliberation of the instant case, only Associate Justice Juanito C. Castaneda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Catherine T. Manahan concurred with the opinion of the *ponente* that the Court *en banc* assume jurisdiction over the Petitions for Review and deny the consolidated petitions for lack of merit.

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[88] An Act Creating the Court of Tax Appeals.

On the other hand, Presiding Justice Roman G. Del Rosario rendered a Dissenting Opinion in which he advocated otherwise, opining that the assailed Resolutions are interlocutory orders. He was joined by Associate Justice Erlinda P. Uy, Associate Justice Esperanza Fabon-Victorino and Associate Justice Cielito N. Mindaro-Grulla in voting to dismiss the consolidated petitions on the ground of prematurity without prejudice to their right to appeal the Court in Division's Resolutions upon disposition of the entire case on the merits.

WHEREFORE, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals, the Petitions for Review filed by First Philippine Holdings Corporation and the Commissioner of Internal are hereby **DENIED** for lack of merit. The findings and conclusions reached by the Second Division in the assailed Resolutions dated September 27, 2016 and March 9, 2017Assailed Resolutions are hereby **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With due respect, see Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

With Concurring Opinion
JUANITO C. CASTAÑEDA JR.
Associate Justice

With due respect, I join PJ's dissent.
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

With due respect, I join PJ's Dissenting Opinion.
ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join PJ's Dissenting Opinion.
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1625** (CTA Case No. 8991)
-versus-	
FIRST PHILIPPINE HOLDINGS CORPORATION, *Respondent,*	

x---x

FIRST PHILIPPINE HOLDINGS CORPORATION, *Petitioner,*	**CTA EB NO. 1626** (CTA Case No. 8991)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 03 2018 1:31 p.m.

x---x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect to the *ponencia*, I submit that the present Petitions for Review should be dismissed on the ground of prematurity.

The assailed Resolutions disposed of the case with respect to the following: (a) deficiency Value-added Tax (VAT) for the 1st and 2nd quarters of 2009; (b) deficiency Expanded Withholding Tax (EWT) for the months of January to July 2009; (c) deficiency Withholding Tax on Compensation (WTC) for the months of January to July 2009; and (d) deficiency Fringe Benefit Tax (FBT) for the 1st and 2nd quarters of 2009, *sans* final disposition of the other reliefs pleaded in the Petition for Review filed by First Philippine Holdings Corporation that remains pending before the Court in Division. **In other words, what were brought on appeal before the Court *En Banc* are resolutions that did not completely dispose of the case nor of a particular matter declared by the Rules of Court to be appealable.**

Truth to tell, the subjects of the Petitions for Review are "interlocutory orders", as distinguished from a "final order", *viz.*:

> "The Court distinguishes final judgments and orders from interlocutory orders in this wise:
>
>> Section 2, Rule 41 of the Revised Rules of Court provides that '(o)nly final judgments or orders shall be subject to appeal.' Interlocutory or incidental judgments or orders do not stay the progress of an action nor are they subject of appeal 'until final judgment or order is rendered for one party or the other.' **The test to determine whether an order or judgment is interlocutory or final is this: 'Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final'.** Xxx xxx xxx. The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. **The word 'interlocutory' refers to 'something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy**.'"[1]

Being interlocutory in nature, the assailed Resolutions may not be the subject of an appeal at this stage. Section 1, Rule 41 of the Rules of Court cannot be any clearer:

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[1] *Judy Anne L. Santos vs. People of the Philippines, and Bureau of Internal Revenue,* G.R. No. 173176, August 26, 2008 citing *De la Cruz v. Paras*, G.R. No. L-41053, 27 February 1976, 69 SCRA 556, 560-561.

> "**Section 1.** *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> xxx
>
> **(c) An interlocutory order;** xxx" (Boldfacing supplied)

The issue on the propriety for the Court *En Banc* to act on appeal that involves an interlocutory order is not novel.

In *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.,*[2] the Court *En Banc* **unanimously** dismissed the Petition for Review on the ground of prematurity. In the assailed Resolutions, the Court in Division declared as void the assessments for deficiency Income Tax, VAT, and EWT for calendar 2010 and set for trial the remaining deficiency taxes for 2010. **The Court *En Banc* found that the assailed Resolutions did not fully and finally disposed of the case and ruled that the Petition for Review should be dismissed on the ground of prematurity, *viz.*:**

> "In other words, **there was yet no judgment rendered in the case that could be elevated on appeal to the Court *En Banc*.** Trial is still necessary for the Court to rule on the merit of the other relief sought by respondent. **Clearly the assailed twin Resolutions are of interlocutory nature and cannot be challenged by an appeal.**" (*Boldfacing supplied*)

In the fairly recent case of *Commissioner of Internal Revenue vs. First Balfour, Inc.,*[3] the Court *En Banc* again **unanimously** ruled that resolutions from the Court in Division that **are interlocutory in nature may not be appealed to the Court *En Banc***, *viz.*:

> "We find no merit in the petitions. A careful and closer look at the arguments set forth by petitioners in their respective Petitions for Review readily reveals that their Petitions for Review were prematurely filed before the Court *En Banc*. The

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[2] CTA EB No. 1593, June 7, 2018; penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan.

[3] CTA EB Nos. 1597 & 1600, June 19, 2018; penned by Associate Justice Cielito N. Mindaro-Grulla, concurred by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; with Concurring Opinion by Presiding Justice Roman G. Del Rosario.

> assailed resolutions of the Court in Division do not finally dispose the case, as it is an interlocutory order and it still leaves something to be done.
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> xxx
>
> **Only decision or order which is appealable to the Court *En Banc* is that which has resolved the case with finality, and in effect terminates or finally disposes of a case, as it leaves nothing to be done by the court as the case has finally been decided on the merits**. In the consolidated petitions, the Court takes judicial notice that the docket in CTA Case No. 9020 is still with the Court's Second Division and still at the trial stage for petitioner's presentation of evidence on the remaining tax deficiency assessment. Clearly, the case is still pending and has neither been terminated nor disposed.
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> xxx
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> Furthermore, it should be noted that tax assessment by the CIR may at sometimes involve several years, various kinds of deficiency tax assessment with different issues. **To chop a single assessment and allow an appeal on a piecemeal basis and not on the entirety of the assessment would be counterproductive, encourages multiplicity of appeals and unnecessary expenses.**
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> xxx
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> **Evidently, the proper procedure that petitioners should have taken in this case was to await the final termination of the proceedings before the Court in Division, prior to the filing of the instant petition for review, because it is a well settled rule that only final orders or judgments on the merits may be the subject of appeal. This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal**. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law." (*Boldfacing supplied*)

To allow the parties' appeal of the assailed Resolutions would unnecessarily result in the suspension of proceedings pertaining to the remaining deficiency tax assessments for calendar year 2009 considering that elevation of the dockets and records of the case to the Court *En Banc* (or to the Supreme Court when further appeal is pursued) is a necessary consequence of appeal. Certainly, such

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consequence is anathema to the orderly and speedy disposition of cases.

All told, I VOTE to DISMISS the respective Petitions for Review of the Commissioner of Internal Revenue and First Philippine Holdings Corporation on the ground of prematurity, **without prejudice to their right to appeal the Court in Division's Resolutions dated September 27, 2016 and March 9, 2017 upon disposition of the entire case on the merits.**

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1625
(CTA Case No. 8991)

- versus –

FIRST PHILIPPINE HOLDINGS CORPORATION,
Respondent.

x---x

FIRST PHILIPPINE HOLDINGS CORPORATION,
Petitioner,

CTA EB No. 1626
(CTA Case No. 8991)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 0 3 2018 1:31 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my learned colleague, Associate Justice Ma. Belen M. Ringpis-Liban in denying the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1625, as well as the Petition for Review filed by First Philippine Holdings Corporation (FPHC) docketed as CTA EB No. 1626. My concurrence with the denial of both Petitions for Review is anchored on both procedural and substantive grounds.

I believe that the assailed Resolutions are **final orders with respect to the periods that the Court in Division declared prescribed**, specifically: a) deficiency VAT for the 1st and 2nd quarters of 2009; b) deficiency EWT for the months of January to July 2009; c) deficiency WT on compensation for the months of January to July 2009; and d) deficiency FBT for the 1st and 2nd quarters of 2009.

Section 1(b), Rule 41[1] of the Rules of Court applies suppletorily to proceedings before this Court and expressly states, *inter alia,* that a party is only allowed to appeal a judgment or a final order which completely disposes of the case. Conversely, no appeal may be taken from orders or resolutions which are interlocutory in nature, to wit:

> "Sec. 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> x x x x x x x x x
>
> 11. **An interlocutory order** (Emphasis supplied.)"

[1] Section 1. Subject of appeal. An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(c) An interlocutory order; xxx

In *Commissioner of Internal Revenue vs. Court of Tax Appeals and CBK Power Company Limited*,[2] the Supreme Court discussed the extent of the jurisdiction of the CTA *En Banc*, thus:

> "It is, therefore, clear that **the CTA *en banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division.**
>
> In *Denso (Phils.), Inc. v. Intermediate Appellate Court*,[3] we expounded on the differences between a 'final judgment' and an 'interlocutory order,' to wit:
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>> x x x **A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; **or a judgment or order that dismisses an action on the ground, for instance, of res judicata or <u>prescription.</u>** Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move x x x and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'
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>> x x x x x x x x x
>>
>> Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying a motion to dismiss under Rule 16 of the Rules x x x. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of

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[2] G.R. Nos. 203054-55, July 29, 2015.
[3] 232 Phil. 256 (1987).

an appeal that may eventually be taken from the final judgment rendered in the case.[4]" *(Emphasis supplied)*

Similarly, in the case of *Santos vs. People of the Philippines and BIR*[5], the Supreme Court distinguished final judgments and orders from interlocutory orders, to wit:

"Section 2, Rule 41 of the Revised Rules of Court provides that '(o)nly final judgments or orders shall be subject to appeal.' Interlocutory or incidental judgments or orders do not stay the progress of an action nor are they subject of appeal 'until final judgment or order is rendered for one party or the other.' The test to determine whether an order or judgment is interlocutory or final is this: 'Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final'. **A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order.** The term 'final' judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. **The order or judgment may validly refer to the entire controversy <u>or to some definite and separate branch thereof.</u>** 'In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, **either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside.' The central point to consider is, therefore, the effects of the order on the rights of the parties.** A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word 'interlocutory' refers to 'something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.'

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[4] *Denso (Phils.), Inc. v. IAC*, supra, at 263-264. (Citations omitted).
[5] *Santos vs. People of the Philippines and BIR*, G.R. No. 173176, August 26, 2008.

> In other words, after a final order or judgment, the court should have nothing more to do in respect of the relative rights of the parties to the case. Conversely, 'an order that does not finally dispose of the case and does not end the Court's task of adjudicating the parties' contentions in determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is interlocutory."

Guided by the foregoing jurisprudential precepts, it is indubitable that the assailed Resolutions concluded a definite and specific branch of the entire controversy involving the assessments on FPHC for taxable year 2009. The Court in Division, having declared the assessments for those particular periods and taxes prescribed, has nothing more to do with regard to those particular periods and taxes. It ought not receive further evidence with respect thereto. It ought not contravene its own orders and include a new ruling with respect to the prescribed portions when the dispositive of the rest of the controversy is penned. Why would it when as far as the Court in Division is concerned, the moment it issued the assailed Resolution dated March 9, 2017 denying the parties' Motion for Reconsideration of the assailed Resolution dated September 27, 2016, it already put a definitive stamp of conclusion on the matter?

As pointed out in *Santos*, the central point to consider is the effect of the assailed Resolutions on the rights of the parties. Since the Court in Division will no longer entertain any argument or further evidence with respect to the periods declared prescribed by the assailed Resolutions, the parties have no other recourse but to avail of the remedy of appeal granted to them by Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), which states:

> "**SEC. 3.** *Who may appeal; period to file petition. –*
>
> x x x x x x x x x
>
> (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 with in 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. *(Rules of Court, Rule 42, sec. 1a)" (Emphasis supplied)*

On the merits, I concur with the *ponencia* insofar as it found that the issues raised by the parties in the consolidated Petitions for Review as mere reiterations of the issues already considered, passed upon, and extensively discussed by the Court in Division in the assailed Resolutions. There is no compelling reason to deviate from, or even modify, the rulings therein.

In view of the foregoing, I vote to **DENY** the present Petitions for Review.

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