REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

NEXT MOBILE, INC., (Formerly NEXTEL COMMUNICATIONS PHILS., INC.),
Respondent.

CTA *EB* NO. 1864
(CTA Case No. 7965)

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NEXT MOBILE, INC., (Formerly NEXTEL COMMUNICATIONS PHILS., INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1865
(CTA Case No. 7965)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 28 2020 2:15 p.m.

x- -x

DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* are the following consolidated Petitions for Review filed on May 30, 2018 and June 18, 2018 with the following prayers:

1. CTA *EB* No. 1864 (*Commissioner of Internal Revenue vs. Next Mobile, Inc., (Formerly Nextel Communications Phils., Inc.)* (hereinafter referred to as Next Mobile):

   a. Deny the Petition for Review filed by Next Mobile;
   b. Uphold the assessments issued against Next Mobile and order Next Mobile to pay the amounts of Php54,552,780.41;Php933,811.03;Php252,282,875.12 Php5,376,143.85, and Php194,000.00, representing deficiency income tax, expanded withholding tax (EWT), final withholding tax (FWT), increments for late remittance of taxes withheld and compromise penalty, respectively, inclusive of increments, plus penalties, surcharges, deficiency interest and delinquency interest until fully paid pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code (NIRC), as amended; and
   c. Order Next Mobile to pay costs.

2. CTA *EB* No. 1865 (*Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc. vs. Commissioner of Internal Revenue*):
   a. Set aside the assailed Resolution;
   b. Partially reconsider the assailed Decision;
   c. Cancel the prescribed portions of the expanded withholding tax (EWT) and the final withholding tax (FWT) assessments in the amount of Php1,874,917.10, inclusive of interests and surcharges, due to prescription;
   d. Cancel the portion of the EWT payable pertaining to the discrepancy between the professional fees paid to General Professional Partnerships (GPPs), as found by the Independent Certified Public Accountant (ICPA), *vis-à-vis* the amount admitted by respondent Commissioner in the amount of Php36,019.43, inclusive of surcharges;
   e. Cancel the FWT due on the accrued professional fees in the amount of Php2,222,752.40, inclusive of

surcharges and impose deficiency EWT in the amount of Php585,241.40, inclusive of surcharges;

f. Cancel the imposition of delinquency interest in the computation of the tax due from Next Mobile.

Both Petitions for Review assail the Amended Decision dated October 13, 2017 and the Resolution dated May 9, 2018 rendered by the Special First Division of this Court (Court in Division).

We quote dispositive portions of the assailed Decision and Resolution as follows:

Amended Decision dated October 13, 2017

"**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2001 covering compromise penalties in the amount of ₱194,000.00 and deficiency income tax in the amount of ₱54,552,780.41 are hereby **CANCELLED AND WITHDRAWN**.

However, the assessments issued by respondent against petitioner for taxable year 2001 covering deficiency expanded withholding tax, final withholding tax and increments for late remittance of EWT, FWT and WTC are hereby **PARTIALLY AFFIRMED**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱8,928,663.62 (EIGHT MILLION NINE HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED SIXTY-THREE PESOS AND 62/100)**, representing basic expanded withholding tax and final withholding tax, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **₱1,874,917.10 (ONE MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND NINE HUNDRED SEVENTEEN PESOS AND 10/100)**, representing 25% surcharge and 20% interest for late remittance of EWT, FWT and WTC, or in the aggregate sum of **₱10,803,580.72 (TEN MILLION EIGHT HUNDRED THREE THOUSAND FIVE HUNDRED EIGHTY PESOS AND 72/100)**, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest	Total
Expanded Withholding Tax	₱ 55,263.74	₱ 13,815.94		₱ 69,079.68
Final Withholding Tax	7,087,667.15	1,771,916.79		8,859,583.94
Subtotal	**₱7,142,930.89**	**₱1,785,732.73**	**-**	**₱8,928,663.62**
Increments for late remittance of EWT, FWT and WTC		₱ 1,806,116.25	₱ 68,800.85	₱ 1,874,917.10

Subtotal		**₱1,806,116.25**	**₱68,800.85**	**₱1,874,917.10**
Total	**₱7,142,930.89**	**₱3,591,848.98**	**₱68,800.85**	**₱10,803,580.72**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱8,928,663.62 computed from November 17, 2005 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended; and

c) Delinquency interest at the rate of twenty percent (20%) per annum on the amount of ₱1,874,917.10 computed from November 17, 2005 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended."

Resolution dated May 9, 2018

"**WHEREFORE**, in light of the foregoing considerations, both petitioner's *Motion for Partial Reconsideration* and respondent's Motion for Partial Reconsideration are **DENIED** for lack of merit."

SO ORDERED."

FACTS

The antecedent facts leading up to the promulgation of the assailed Amended Decision on October 13, 2017 are as follows:

Petitioner Next Mobile filed a Petition for Review on August 27, 2009 docketed as CTA Case No. 7965 praying for the cancellation of the tax assessments for alleged deficiency income tax, EWT and FWT for taxable year 2001. It was raffled originally to the Second Division of this Court and was transferred to the First Division in an Order dated January 11, 2010.

The First Division rendered a Decision in CTA Case No. 7965 on December 11, 2012 favoring Next Mobile and consequently cancelled the tax assessments for taxable year 2001 on the ground of prescription. A Resolution dated March 14, 2013 was issued denying the Motion for Reconsideration filed by respondent Commissioner of Internal Revenue (CIR).

The CIR then appealed the aforesaid Decision and Resolution rendered by the First Division to the CTA *En Banc* and docketed as CTA *EB* No. 1001 entitled *CIR vs. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.).*

The CTA *En Banc* rendered a Decision on May 28, 2014 which denied the Petition for Review filed by the CIR and affirmed the Decision dated December 11, 2012 and the Resolution dated March 14, 2013 promulgated by the First Division.

Aggrieved, the CIR posted its Petition for Review on *Certiorari* with the Supreme Court on August 27, 2014 which was docketed as G.R. No. 212825 entitled *CIR vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.).*

On December 7, 2015, the Supreme Court rendered a decision in G.R. No. 212825 and reversed and set aside the Court's En Banc Decision in CTA EB No. 1001 and ruled that the waivers executed by the parties are valid. The Supreme Court in the same decision, also remanded the case to the CTA for the determination of the merits of Next Mobile's prayer to nullify the FLD and assessment notices which were the subject of the controversy, part of the dispositive portion is quoted hereinbelow:

> "**WHEREFORE**, premises considered, the Court resolves to **GRANT** the petition. The Decision of the Court of Tax Appeals *En Banc* dated May 28, 2014 in CTA EB Case No. 1001 is hereby **REVERSED** and **SET ASIDE.** Accordingly, let this case be remanded to the Court of Tax Appeals for further proceedings in order to determine and rule on the merits of respondent's petition seeking the nullification of the BIR Formal Letter of Demand and Assessment Notices/Demand No. 43-734, both dated October 17, 2005."

In accordance with the aforequoted Decision of the Supreme Court, the CTA *En Banc* issued a Resolution dated August 11, 2016 and remanded CTA Case No. 7965 to the court of origin (First Division) for further proceedings.

On October 13, 2017, the Special First Division (Court in Division) of this Court rendered the assailed Amended Decision, which is now the subject of the consolidated Petitions for Review.

For an efficient factual narrative of the instant case and to clarify and identify the main controversy which started it all, we quote portions of the original Decision of the First Division dated December 11, 2012, thus:

> Culled from the records of this case, the factual antecedents are as follows:
>
> Petitioner is a domestic corporation organized under RA No. 7301 and RA No. 7940, with principal office address at Next Mobile Building, 2244 Espana Avenue, Sampaloc, Manila. In 2003, petitioner changed its name from Nextel Communications Philippines, Inc. to Next Mobile, Inc.[1]
>
> Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR, holding office at the BIR National Office, Diliman, Quezon City.
>
> On April 15, 2002, petitioner filed with the BIR its Annual Income Tax Return (ITR) for taxable year ending December 31, 2001.[2]
>
> Petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) for taxable year ending December 31, 2001 on the following dates:

MONTH	DATE OF FILING
January 2001	February 12, 2001
February 2001	March 12, 2001
March 2001	April 10, 2001
April 2001	*June 10, 2001
May 2001	June 11, 2001
June 2001	July 10, 2001
July 2001	August 10, 2001
August 2001	September 10, 2001
September 2001	October 10, 2001
October 2001	November 12, 2001
November 2001	December 10, 2001
December 2001	January 15, 2002

*As prescribed by law, the last day for filing was on May 10, 2001

> Petitioner likewise filed its Monthly Remittance Returns of Expanded Withholding Tax (BIR Form No. 1601-E) for taxable year ending December 31, 2001 on the following dates:

MONTH	DATE OF FILING
January 2001	February 12, 2001
February 2001	March 12, 2001
March 2001	April 10, 2001
April 2001	May 10, 2001
May 2001	June 11, 2001
June 2001	July 10, 2001

[1] Pars. 1 and 6, Stipulated Facts, Joint Stipulation of Facts and Issues, docket, pp. 144 and 145.
[2] Par. 3, *id.*, docket, p. 145.

July 2001	August 10, 2001
August 2001	September 10, 2001
September 2001	October 10, 2001
October 2001	November 12, 2001
November 2001	December 10, 2001
December 2001	January 15, 2002

For taxable year ending December 31, 2001, petitioner filed its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) on the following dates:

Month	**Date of Filing**
January 2001	*February 13, 2001
February 2001	March 12, 2001
March 2001	April 10, 2001
April 2001	May 10, 2001
May 2001	June 11, 2001
June 2001	July 10, 2001
July 2001	August 10, 2001
August 2001	September 10, 2001
September 2001	October 10, 2001
October 2001	November 12, 2001
November 2001	December 10, 2001
December 2001	January 15, 2002

*As prescribed by law, the last day for filing was on February 12, 2001

On September 24, 2003, petitioner received a copy of the Letter of Authority (LOA) dated September 8, 2003 signed by Regional Director Nestor S. Valeroso authorizing Revenue Officer Nenita L. Crespo of RDO No. 43 to examine petitioner's books of accounts and other accounting records for income and withholding taxes for the period covering January 1, 2001 to December 31, 2001.

Ms. Ma. Lida Sarmiento, Director of Finance of petitioner, executed several waivers of the statute of limitations to extend the prescriptive period of assessment for taxes due in taxable year ending December 31, 2001 (the "Waivers"), the details of which are summarized as follows:

Waiver	**Extended Date of Prescription**	**Date of Execution**	**Date of Acceptance by BIR**	**Date of Acknowledgment**	**BIR Signatory**
First Waiver	March 30, 2005	August 26, 2004	None	August 30, 2004	Revenue District Officer
Second Waiver	June 30, 2005	October 22, 2004	None	October 22, 2004	Revenue District Officer
Third Waiver	September 30, 2005	January 12, 2005	None	January 18, 2005	Revenue District Officer
Fourth Waiver	September 30, 2005	None	None	May 3, 2005	Revenue District Officer

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Fifth Waiver	October 31, 2005	March 17, 2005	None	May 3, 2005	Revenue District Officer

On May 13, 2005, petitioner was furnished copies of the Fourth and the Fifth Waivers, which appeared to have been signed by the Revenue District Officer of RDO No. 43, Mr. Raul Vicente L. Recto.

On September 26, 2005, petitioner received from the BIR, a Preliminary Assessment Notice (PAN) dated September 16, 2005 for which petitioner filed a Reply.

On October 25, 2005, petitioner received a Formal Letter of Demand dated October 17, 2005 and Assessment Notices/Demand No. 43-734 dated October 17, 2005 from the BIR, demanding payment of deficiency income tax, FWT, EWT, increments for late remittance of taxes withheld, and compromise penalty for failure to file returns/late filing/late remittance of taxes withheld, in the total amount of Php313,339,610.41, for taxable year ending December 31, 2001, broken down as follows:

NATURE OF TAX	**TOTAL**
Income Tax	Php 54,552,780.41
Expanded Withholding Tax	933,811.03
Final Withholding Tax	252,282,875.12
Increments for Late Remittance of Taxes Withheld (EWT/FWT/WTC)	5,376,143.85
Compromise Penalty(Failure to file 1604CF; 1604E; Inventory List and alphalist of income payments subjected to WT; Late filing and remittance of taxes withheld)	194,000.00
	Php313,339,610.41

On November 23, 2005, petitioner filed its protest against the FLD and FAN and requested the reinvestigation of the assessments.

On February 27, 2007, petitioner transferred its business registration from RDO No. 43 to RDO No. 32.

On July 28, 2009, petitioner received a letter from the BIR denying petitioner's protest. Thus, on August 27, 2009, petitioner filed the instant Petition for Review docketed as CTA Case No. 7965.

On October 5, 2009, respondent filed her Answer to the Petition for Review and raised the following Special and Affirmative Defenses:

> "5. The subject assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by examiners are presumed correct and made

in good faith and the taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 547).

6. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation, Co., 107 Phil 967 [1960]).

7. All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary (*Commissioner of Internal Revenue v. Antonio Tuason, Inc., 173 SCRA 397; Commissioner of Internal Revenue v. Construction Resources of Asia, Inc. 145 SCRA 671*).

8. The substantive requirements of a valid waiver have been duly complied with by the petitioner and respondent, that is, (1) the waiver must be in writing; (2) it must be signed by the Commissioner of Internal Revenue or his authorized representative and the taxpayer or its responsible officer, and (3) the waiver must be executed within three (3) years prescriptive period to assess pursuant to Section 222 of the 1997 Tax Code. It is but proper that the waiver was signed by Revenue District Officer considering that latter was the authorized representative of the respondent by virtue of a valid delegation of authority issued by the respondent.

9. Petitioner and respondent have benefited from the waiver they executed. It is now duplicitous for the petitioner to assail the very waiver it has executed and received benefits therefrom (Dolores V. Mendoza, et. Al, vs. Agrix Marketing, Inc., 171 SCRA 738, 743 [1983]).

10. By benefiting from the waiver it had executed, petitioner could not now assail its validity. It has been held that the taxpayer is estopped from repudiating a waiver of the statute of limitations which the government has relied upon (Yutivo & Sons Hardware Co. vs. Court of Tax Appeals, et. Al., 1 SCRA 160, 176 [1961], citing Mertens, Law of Federal Income Taxation, Volume 10-A, pp. 159-160).

11. It is (sic) well-settled rule in taxation that the State cannot be put in estoppel by the mistakes, errors, negligence and inadvertence of its officials or agents. Although the government may generally be estopped through the affirmative acts of public officers acting within

their authority, their neglect, mistake, error, or omission of public duties should not prejudice the government to assess and/or collect the taxes due from the taxpayers, particularly where there was effort made by respondent to allow the petitioner to controvert said assessments but the latter have chosen to hide its evidence and opted to challenge the respondent through technicalities.

12. While the petitioner has executed several waivers of statutes of limitations, the same shall become inconsequential where the petitioner filed a *false income tax return*, hence, respondent's right to assess is within ten (10) years from the date of the discovery of falsity pursuant to Section 222 (a) of the 1997 Tax Code, thus:

> 'Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> a. *In the case of a false xxx xxx return with intent to evade tax xxx, the tax may be assesses [sic] 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 falsity xxx xxx.*"

On October 19, 2009, petitioner filed its Reply to respondent's Answer disputing respondent's allegations therein.

During trial, the parties presented and formally offered their respective witnesses and documentary evidence.

The case was submitted for decision on May 14, 2012, taking into consideration petitioner's Memorandum filed on May 3, 2012 and respondent's Memorandum filed on May 7, 2012."

As mentioned earlier, the First Division of this Court granted the Petition for Review in CTA Case No. 7965 and cancelled the assessments issued by the CIR for being issued beyond the prescriptive period allowed by law, and we quote:

> "Accordingly, this Court finds, and so holds, that the subject Waivers were invalid and not binding, and consequently, the three-year period prescribed by law to issue an assessment was not extended.
>
> In sum, the exceptions provided under Section 222(a) and (b) of the NIRC of 1997, as amended, do not apply in the instant case. Instead, the original three-year prescriptive period to issue the tax assessment as required under Section 203 of the NIRC of 1997, as amended, applies. Hence, the FLD and FAN, both dated October 17, 2005, which were received by petitioner on October 25, 2005, are void for being issued beyond the prescriptive period provided under Section 203 of the NIRC of 1997, as amended. Consequently, the "1st

> Notice" dated July 24, 2009, which sprung from the void FLD and FAN is likewise void and should be set aside.
>
> In view of the foregoing pronouncements, resolution of the remaining stipulated issues, more particularly, the merits of the subject assessments, becomes no longer necessary.
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand dated October 17, 2005 and the Assessment Notices/Demand No. 43-734 dated October 17, 2005 are both hereby **CANCELLED** and **WITHDRAWN** for being issued beyond the prescriptive period allowed by law. Consequently, the "1st Notice" dated July 24, 2009 demanding payment of assessed deficiency income tax, final withholding tax, expanded withholding tax, increments for late remittance of taxes withheld, and compromise penalty in the total amount of Php313,339,610.41 for taxable year ending December 31, 2001 is hereby **SET ASIDE**.
>
> **SO ORDERED.** "

As mentioned, appeal was made to the CTA *En Banc* with regard to the above Decision and eventually to the Supreme Court.

ISSUES

Based on the Petition for Review filed by Next Mobile, the only issue raised before the Court *En Banc* is as follows:

> "Whether the CTA Division erred in ruling that Next Mobile is liable for deficiency EWT, FWT and increments for late remittance of EWT, FWT and WTC for the year 2001 in the total amount of Php10,803,580.72"

On the other hand, based on the assignment of errors raised by the CIR in his Petition for Review, the issues raised are as follows:

1. Whether or not the Special First Division of the Court committed a reversible error when it cancelled and withdrew the assessments issued by petitioner against respondent for taxable year 2001 covering compromise penalties and deficiency income tax in the amount of Php194,000.00 and Php54,552,780.41, respectively;

2. Whether or not the Special First Division of the Court committed a reversible error when it ordered respondent to pay petitioner only the amount of Php8,929,663.62 representing basic EWT and FWT, inclusive of the 25% surcharge and the amount of P1,874,917.10, representing 25% surcharge and 20% interest for late remittance of EWT, FWT and WTC, and not the full amount of Php933,811.03, Php252,282,875.12, and Php5,376,143.85 representing deficiency EWT, FWT, and increments for late remittance of taxes withheld.

Next Mobile's Arguments

Next Mobile argues that portions of the assessment have already prescribed during the execution of the first Waiver and therefore not covered by the latter. It avers that the Court in Division's reference to the "law of the case" in the *CIR vs. Next Mobile, Inc.* case decided by the Supreme Court[3] pertains only to the reliability of the subject waivers, and not the timeliness of the execution thereof, specifically of the first waiver. It also argued that the Supreme Court did not make any factual and legal findings on the filings of the FWT, EWT, and WTC tax returns *vis-à-vis* the date of the execution of the first Waiver. Next Mobile points out that the Supreme Court (in that case) only adjudicated on the multiplicity of the Waivers as basis of the *pari delicto* and *estoppel* doctrines but not on its coverage, i.e., whether some of the assessed items have prescribed.

To illustrate its point, Next Mobile narrated that the first waiver was executed on August 26, 2004 and acknowledged on August 30, 2004 and as a result, the deficiency FWT, EWT and WTC pertaining to January to July 2001 have already prescribed and should be removed from the computation of the total taxes due. Consequently, Next Mobile asserts that the assessment arising from the alleged late remittance of FWT, EWT and WTC in the amount of Php1,874,917.10 should be cancelled. Next Mobile further points out that although the principle of *estoppel* was used by the Supreme Court to validate the questioned waivers, it cannot be used to validate portions of the assessment that have already prescribed when the first waiver became effective.

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

With regard to the disposition of the Court in the assailed Amended Decision on the substantive merits of the assessments particularly the discrepancy between the professional fees paid to GPPs, Next Mobile disagrees and contends that it adequately showed that it made payments to the said GPPs in the amount of Php14,923,297.35 during the year 2001, hence, the amount should be removed from the EWT assessment.

Next Mobile also disagrees with the assailed Amended Decision on its inclusion in its FWT computation, the accrued professional fees in the amount of Php5,556,881.00 which applied an FWT flat rate of 32%. Next Mobile submits that the ICPA report should have been made the basis of the Court's conclusion because it provides an adequate proof of the breakdown of Php5,556,881.00.

As to the 20% delinquency interest (per annum from November 17, 2005 until full payment) imposed by the Court in the assailed Amended Decision, Next Mobile opines that such delinquency interest should not be applied in highly controversial cases such as the instant case.

CIR's Arguments

The arguments of the CIR in his Petition for Review revolves around the central theme and oft-repeated doctrine that assessments are presumed correct and that the taxpayer has the duty to prove otherwise. He contends that Next Mobile was not able to discharge this burden hence the assailed Amended Decision should be modified to order Next Mobile to pay the amounts of Php54,552,780.41; Php933,811.03; Php252,282,875.12; Php5,376,143.85, and Php194,000.00, representing deficiency income tax, EWT, FWT, increments for late remittance of taxes withheld and compromise penalty, respectively, inclusive of increments, plus penalties, surcharges, deficiency interest and delinquency interest until fully paid pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code (NIRC), as amended.

In its *Comment/Opposition (On Petitioner's Petition for Review dated 06 June 2018)* filed on July 27, 2018, Next Mobile averred that the presumption of correctness of tax assessments does not apply to this case because the conditions required by law and jurisprudence are not present, namely: (a) the taxpayer refuses or fails to adduce evidence required by the Bureau of Internal Revenue and (b) the examining officer has performed his duties with due diligence.

RULING OF THE COURT EN BANC

<u>Next Mobile's Petition for Review in CTA *EB* No. 1865</u>

We shall first resolve the issue on prescription of the waivers involved in the instant case.

Next Mobile avers that there are portions of the deficiency assessment which have already prescribed during the execution of, and therefore not covered by the first waiver, hence the ruling of the Supreme Court in the *CIR vs. Next Mobile case*[4] (Next Mobile case) declaring the waivers to be valid should not affect said portions that have prescribed. It contends that the "law of the case" concerns only legal questions or issues adjudicated in the former appeal.

We subscribe to the theory of Next Mobile.

The ruling of the Supreme Court in the *CIR vs. Next Mobile* case offered a fresh view on the controversy involving defects in waivers executed by the taxpayer and the representatives of the BIR, meant to extend the period to assess beyond the three-year period prescribed by law. It ruled that neither parties should benefit from the defects of the waiver if both of them had a hand in causing said defects eliciting the doctrine of *pari delicto* or the "equal fault" doctrine. However, the twist in the said conclusion was that the even if both parties are at fault, the Supreme Court ruled in favor of the BIR as regards the waivers and upheld their validity on the basis of the lifeblood doctrine, and we quote:

> "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. xxx xxx xxx. **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."** (emphasis supplied)

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[4] Supra, see Footnote No. 3. *cn*

The above ruling of the Supreme Court was highlighted by its declaration that respondent (Next Mobile) is further *estopped* from questioning the validity of the waivers. Although used sparingly by the Supreme Court in previous cases involving defective waivers, it was constrained to adopt the principle of *estoppel* in this case brought about by the fact that Next Mobile executed several waivers and delivered them to the BIR one after the other without raising any objections, allowing the BIR to rely on them. The Supreme Court mentioned that the application of estoppel is necessary to prevent undue injury to the government because of the possible cancellation of its assessments by reason of defective waivers partly caused by the taxpayer.

Be that as it may, the Supreme Court, after ruling that the waivers are deemed valid, remanded the case to this Court to determine and rule on the merits of Next Mobile's petition seeking the nullification of the BIR's Formal Letter of Demand and Assessment Notices, both dated October 17, 2005. The remand of the case to this Court for further proceedings is an acknowledgment that there are still some factual matters to be determined relative to the subject assessment notices dated October 17, 2005. This acknowledgment is consistent with the well-established rule that the Supreme Court is not a trier of facts.[5] It therefore becomes incumbent on the part of the Court to look at the factual merits of the case on appeal, including the issue on prescription of some of the portions of the subject assessments.

We now proceed to resolve the issues raised by Next Mobile on the items of the tax assessment, *in seriatim*.

A. Portions of the assessment have already prescribed prior to the execution of the first waiver

Next Mobile points out that portions of the assessments have already prescribed during the execution of, and therefore not covered by, the first waiver. Next Mobile avers that the Court should exclude the (highlighted) periods covering January to July 2001 provided in the table below and include only the rest of the periods for deficiency FWT, EWT and WTC :

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[5] Remedios Pascual vs. Benito Burgos, et.al., G.R. No. 17122, January 11, 2016.

Final Withholding Tax			
Month Covered	**Date Return Filed**	**Last Day to File Return**	**Last Day to Assess**
January 2001	10 June 2001	12 February 2001	11 June 2004
February 2001	10 June 2001	12 March 2001	11 June 2004
March 2001	10 June 2001	10 April 2001	11 June 2004
April 2001	10 June 2001	10 May 2001	11 June 2004
May 2001	10 June 2001	11 June 2001	11 June 2004
June 2001	10 July 2001	10 July 2001	10 July 2004
July 2001	10 August 2001	10 August 2001	10 August 2004
August 2001	10 September 2001	10 September 2001	10 September 2004
September 2001	10 October 2001	10 October 2001	10 October 2004
October 2001	12 November 2001	12 November 2001	12 November 2004
November 2001	10 December 2001	10 December 2001	10 December 2004
December 2001	15 January 2002	25 January 2002	25 January 2005
Expanded Withholding Tax			
Month Covered	**Date Return Filed**	**Last Day to File Return**	**Last Day to Assess**
January 2001	13 February 2001	12 February 2001	13 February 2004
February 2001	12 March 2001	12 March 2001	12 March 2004
March 2001	11 April 2001	10 April 2001	11 April 2004
April 2001	10 May 2001	10 May 2001	10 May 2004
May 2001	11 June 2001	11 June 2001	11 June 2004
June 2001	10 July 2001	10 July 2001	10 July 2004
July 2001	10 August 2001	10 August 2001	10 August 2004
August 2001	10 September 2001	10 September 2001	10 September 2004
September 2001	10 October 2001	10 October 2001	10 October 2004
October 2001	12 November 2001	12 November 2001	12 November 2004
November 2001	10 December 2001	10 December 2001	10 December 2004
December 2001	10 January 2002	25 January 2002	25 January 2005
Withholding Tax on Compensation			
Month Covered	**Date Return Filed**	**Last Day to File Return**	**Last Day to Assess**
January 2001	13 February 2001	12 February 2001	12 February 2004
February 2001	12 March 2001	12 March 2001	12 March 2004
March 2001	11 April 2001	10 April 2001	11 April 2004
April 2001	10 May 2001	10 May 2001	10 May 2004
May 2001	11 June 2001	11 June 2001	11 June 2004
June 2001	10 July 2001	10 July 2001	10 July 2004
July 2001	10 August 2001	10 August 2001	10 August 2004
August 2001	10 September 2001	10 September 2001	10 September 2004
September 2001	10 October 2001	10 October 2001	10 October 2004
October 2001	12 November 2001	12 November 2001	12 November 2004
November 2001	10 December 2001	10 December 2001	10 December 2004
December 2001	15 January 2002	25 January 2002	25 January 2005

We agree with the contention of Next Mobile.

Records show that the first waiver was executed on August 26, 2004 and acknowledged on August 30, 2004[6]. Thus, the assessments for deficiency FWT, EWT and WTC pertaining to January to July 2001 and the *increments* for late remittance of WTC and EWT for the months of January and March 2001 and FWT for the months of January to April 2001, have already prescribed prior to the execution of the First waiver.

Therefore, the assessed *increments* for late remittance of WTC and EWT due for the months of January and March 2001 and FWT due for the months of January to April 2001 in the total amount of ₱5,376,143.85 should be cancelled due to prescription.

However, with regard to the EWT and FWT assessments, Next Mobile was unable to establish through solid documentary evidence that the deficiency EWT and FWT assessments in the amounts of ₱69,079.68 and ₱8,859,583.94, respectively, exclusive of interests, pertained to the (prescribed) months of January to July 2001.

In the absence of proof such as billings/invoices, statements of account, official receipts, detailed general ledger, etc., this Court shall consider the said amounts as pertaining to the unprescribed months of August to December 2001, hence must be upheld.

B. Payments made to GPPs were properly substantiated

Next Mobile asserts that it adequately substantiated its payments to GPPs amounting to Php14,923,297 during the taxable year 2001 contrary to the contention of the Court in Division in its assailed Amended Decision, hence the entire amount should be removed from the assessment.

We disagree.

Records show that Next Mobile failed to substantiate its payments to GPPs amounting to ₱288,155.35.

We adopt the disquisition of the Court in Division on this issue as follows:

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[6] *Commissioner of Internal Revenue vs. Next Mobile, Inc. [formerly Nextel Communications Phils., Inc.]*, G.R. No. 212825, December 7, 2015.

"With regard to the professional fees paid to general professional partnerships (GPPs) in the amounts of ₱5,678,130.21 and ₱9,245,167.14 totalling ₱14,923,297.35, respondent admitted that petitioner made such income payments but in the amount of ₱14,635,142.00. This can be seen from the respondent's deduction of the latter figure in arriving at the assessed professional fees of ₱5,249,849.00.

Section 22(B) of the NIRC of 1997, as amended, defines GPPs as *"partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business"*. As a corollary thereto, Section 26 of the same law provides that a general professional partnership shall not be subject to income tax. Its partners are the ones liable for income tax in their separate and individual capacities.

Consequently, GPPs are exempt from EWT as provided for under Section 2.57.5 of RR No. 2-98, as amended by RR No. 14-02, to wit:

Sec. 2.57.5. *Exemption from Withholding.* — **The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:**

xxx xxx xxx

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

xxx xxx xxx

(4) **General professional partnerships**

(*Emphases and underscoring supplied*)

Clearly, the professional fees paid by petitioner to GPPs are not subject to EWT. **However, since petitioner failed to support the ₱288,155.35 discrepancy between the professional fees paid to GPPs as found by the ICPA *vis-à-vis* the amount admitted by respondent, the same shall be assessed of the corresponding 10% EWT of ₱28,815.54."** (emphasis supplied)

Next Mobile avers that the "Summary list of Professional Fees – Legal Fees Paid to GPP" adequately establishes that the amount of ₱5,678,130.21 of the total professional fees paid by the petitioner during the taxable year 2001 pertains to legal fees paid for legal services rendered by GPPs.[7]

[7] Exhibit "MMM", Docket, Vol. II, pp. 787-789.

Secondly, Next Mobile insists that the "Summary list of Professional Fees – tax and audit paid to GPP", proves that ₱9,245,167.14 of the total professional fees paid during the taxable year 2001 pertains to tax and audit fees rendered by GPPs.[8]

The Court finds that a mere schedule of payments are insufficient to prove actual payments of the alleged professional fees paid to GPPs. Next Mobile should have presented the corresponding billings/invoices, statement of accounts, official receipts and Articles of Partnership of the GPPs. Its failure to present said source documents leads this Court to uphold the imposition of 10% EWT amounting to Php28,815.54 on the professional fees of Php288,155.35.

As a general rule, assessments by tax examiners are presumed correct and made in good faith and all presumptions are in favor of the correctness of the assessments.[9] The taxpayer bears the burden of proving that the assessments are incorrect.[10]

C. The accrued professional fees in the amount of Php5, 556,881 should be subjected to different *EWT* rates of 1%, 2%, 10% and 32% instead of the *FWT* rate of 32% as applied by the Court in its assailed Amended Decision.

Next Mobile argues that the accrued professional fees amounting to ₱5,556,881.00 included in the deficiency FWT computation is erroneous and should have been subjected to FWT rates of 1%, 2%, 10% and 32% instead of the flat 32% FWT rate. The Court in Division disagreed with this contention as petitioner failed to provide documents to support the breakdown of the assessed amount of ₱5,556,881.00.

Next Mobile maintains that the ICPA report is an adequate proof of the breakdown of ₱5,556,881.00 as an EWT item.[11] Next Mobile contends that although an ICPA report is not conclusive, it is still persuasive in nature and thus must be given utmost consideration by the Court.

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[8] Exhibit "NNN", Docket, Vol. II, pp. 789-A.
[9] CIR vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31. 2005.
[10] Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997.
[11] Annex 13 of the ICPA Report, Docket, Vol. II, p. 1014.

We likewise disagree with the theory of Next Mobile and rule that the accrued professional fees are subject to the flat rate of 32% FWT rate, in the absence of contrary evidence.

The Court is not bound by the findings of the ICPA. Moreover, the ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merits or probative value of such report belongs to the Court. Thus, Next Mobile cannot insist that the ICPA's findings are sufficient to support its claims. It is essential for Next Mobile to present documents to support its allegations in the Petition for Review because the Court cannot solely rely on the ICPA report.

The ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's protest. The Court may (or may not) adopt totally or partially the ICPA's report depending on its own appreciation of the documents upon which the ICPA report is based. In other words, the Court will still examine and verify the documents audited or examined by the ICPA. The Court, in its sound discretion, may render judgment without considering the ICPA report. The ICPA report is only persuasive in nature and not conclusive upon the Court. Section 3, Rule 13 of the Revised Rules of the CTA (RRCTA), relevantly provides, thus:

> SEC. 3. Findings of independent CPA. - <u>The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents</u>, the availability. of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.** *(Underscoring and boldfacing supplied)*

We therefore affirm the ruling of the Court in Division in the assailed Decision which imposed the 32% FWT on the assessed amount of ₱5,556,881.00, and we quote:

> "Regarding the accrued professional fees of ₱5,556,881.00, the ICPA found that these should be subjected to EWT instead of FWT[12]. However, other than a breakdown of the amount of ₱5,556,881.00 which was attached as Annex

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[12] Exhibit "RRR", Docket, Vol. II, p. 1000.

13 of the ICPA report[13], no supporting documents such as invoices, billing statements and official receipts were submitted in order for this Court to ascertain the actual nature and proper tax implication of the said expenses. Hence, the deficiency FWT assessment on this item shall remain"

D. No delinquency interest is due because the case is highly controversial

Next Mobile asserts that the imposition of the delinquency interest is not proper because this case is highly controversial as it made an exception to the previous rulings of the Supreme Court which held that waivers are void if not executed in accordance with Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegated Authority Order No. (RDAO) No. 05-01. Next Mobile claims that it relied on these Supreme Court rulings, hence, did not pay the assessed deficiency taxes since it believed in good faith that these amounts had already prescribed. Therefore, Next Mobile maintains that it should not pay any delinquency interest.

The contention of Next Mobile is without merit.

The Supreme Court ruling in the **Next Mobile** case presents an *exception* to the general rule that waivers must be executed in accordance with the requirements and form prescribed under RMO No. 20-90 and RDAO 05-01 and most recently, RMO No. 14-2016 issued on April 4, 2016. Contrary to the contention of Next Mobile, the decision of the Supreme Court in the *Next Mobile* case did not overturn previous rulings of the Supreme Court in cases involving defective waivers and its effects.[14] It cannot then claim that the ruling of the Supreme Court in the *Next Mobile* case is "highly controversial."

We subscribe to the view adopted by the Court in Division in the assailed Resolution on this particular issue, and we quote:

"We do not subscribe to petitioner's contention that the instant case is highly controversial since "it overturned previous rulings by the Supreme Court which consistently held that Waivers are void if not executed in accordance with Revenue Memorandum Order No. ("RMO") 20-90 and Revenue Delegated Authority Order No. ("RDAO") 05-01.

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[13] Exhibit "RRR", Docket, Vol. II, p. 1014.

[14] Philippine Journalists vs. CIR, G.R. No. 162852, December 16, 2004; CIR vs. Kudos Metal, G.R. No. 178087, May 5, 2010.

> As already shown, to be exempted from the payment of tax penalties, what should be "highly controversial" is the tax assessment itself, and not the case *per se*. But even granting that it may extend to cases, the instant case hardly falls under the category of being *"highly controversial."* **To be clear, contrary to the assertion of petitioner, G.R. No. 212825 did not overturn *"previous rulings by the Supreme Court."*** This is so because the said case was decided by a Division of the High Court, *i.e.*, its Third Division, and pursuant to Section 4(3) of Article VIII of the 1987 Constitution, only the Supreme Court sitting *En Banc* may modify or reverse any previous doctrine or principle of law it has laid down in a decision. Thus, G.R. No. 212825 could not have overturned previous rulings by the High Court. Rather, in the said case, the latter Court merely recognized an exception (i.e., when the parties are in *pari delicto)* to the general rule that *"when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO No. 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes."*
>
> *Apropos,* tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condone *(sic)* for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state in time. The imperatives of public welfare will not approve of this result.(emphasis supplied)

CIR's Petition for Review in CTA EB No. 1864

With regard to the Petition for Review filed by the CIR, it merely contains a general statement that assessments are deemed valid and are presumed correct and that it is incumbent on the part of the taxpayer to impugn its validity. Apart from this general averment, the CIR offered no substantial or specific arguments or opposition against the assailed Amended Decision and Resolution and merely prays that the original assessments issued against Next Mobile be upheld. This Court is therefore, unable to address the alleged errors being assailed in the Amended Decision and Resolution, precisely because there are none offered by the CIR in his Petition for Review. It is for this reason that we deny the Petition for Review filed by the CIR on the ground that it failed to present any argument/s sufficient to convince us to modify the Court in Division's Amended Decision and Resolution.

In light of the foregoing considerations, the Petition for Review filed by petitioner CIR in CTA *EB* No. 1864 (*Commissioner of Internal Revenue vs. Next Mobile, Inc., (Formerly Nextel Communications Phils., Inc.)* is hereby **DENIED** for lack of merit while the Petition for Review filed by petitioner Next Mobile in CTA *EB* No. 1865 is **PARTIALLY GRANTED** in so far as the imposition of the late remittance of WTC and EWT due for the months of January and March 2001 and FWT due for the months of January to April 2001 in the total amount of ₱5,376,143.85.

Accordingly, the amount of Php5,376,143.85 imposed on late remittance is deleted and canceled on the ground of prescription. However, we uphold the ruling of the Court in Division in the assailed Amended Decision as regards the other items included in the deficiency tax assessments, with the applicable imposition of delinquency and deficiency interests.

The dispositive portion of the assailed Amended Decision is hereby **MODIFIED** to read as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2001 covering compromise penalties in the amount of ₱194,000.00, deficiency income tax in the amount of ₱54,552,780.41 and increments for late remittance of ₱5,376,143.85 are **CANCELLED AND WITHDRAWN**.
>
> However, the assessments issued by respondent against petitioner for taxable year 2001 covering deficiency EWT and FWT are hereby **PARTIALLY AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **SIXTY-SIX MILLION SEVEN HUNDRED TWELVE THOUSAND SIX HUNDRED FIFTY PESOS AND EIGHTY-TWO CENTAVOS (₱66,712,650.82)**, representing basic deficiency EWT and FWT and the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest, and twenty percent (20%) delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	EWT	**FWT**	**Total**
Basic Tax	₱ 55,263.74	₱ 7,087,667.15	₱ 7,142,930.89
Add: 25% Surcharge	13,815.94	1,771,916.79	1,785,732.73

20% Deficiency Interest from January 16, 2002 to November 17, 2005			
(₱55,263.74 x 20% x 1,402/365 days)	42,454.66		42,454.66
(₱7,087,667.15 x 20% x 1,402/365 days)		5,444,881.83	5,444,881.83
Total Amount Due as of Nov. 17, 2005	**₱111,534.34**	**₱14,304,465.77**	**₱14,416,000.11**
Add: 20% Deficiency Interest from Nov. 18, 2005 to Dec. 31, 2017			
(₱55,263.74 x 20% x 4,427/365 days)	134,056.21		134,056.21
(₱7,087,667.15 x 20% x 4,427/365 days)		17,192,932.86	17,192,932.86
20% Delinquency Interest from Nov. 18, 2005 to Dec. 31, 2017			
(₱111,534.34 x 20% x 4,427/365 days)	270,554.81		270,554.81
(₱14,304,465.77 x 20% x 4,427/365 days)		34,699,106.83	34,699,106.83
Total Amount Due as of Dec. 31, 2017	**₱516,145.36**	**₱66,196,505.46**	**₱66,712,650.82**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the ₱14,416,000.11 total amount due as of November 17, 2005 computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(ON OFFICIAL BUSINESS)
ERLINDA P. UY
Associate Justice

(on official business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(on official business)
MARIA ROWENA MODESTO-SAN PEDRO
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*

-*versus*-

NEXT MOBILE, INC. (formerly NEXTEL COMMUNICATIONS PHILS., INC.), *Respondent.*

CTA EB NO. 1864
(CTA Case No. 7965)

x- -x

NEXT MOBILE, INC. (formerly NEXTEL COMMUNICATIONS PHILS., INC.), *Petitioner,*

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CTA EB NO. 1865
(CTA Case No. 7965)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and,
MODESTO-SAN PEDRO, JJ.

Promulgated:

FEB 28 2020 2:15 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1864 on the ground that the questioned assessments are void *ab initio* due to the lack of authority of the revenue officer who conducted the audit and investigation of Next Mobile, Inc. With due respect, I am constrained to grant the Petition for Review filed by Next Mobile, Inc. in CTA EB No. 1865.

Records disclose the following:

- **Letter of Authority (LOA) (LOA 200000069247)**[1] **dated September 8, 2003** was issued by **Regional Director** Nestor S. Valeroso, authorizing **Revenue Officer (RO) Nenita L. Crespo** to examine the books of accounts and other accounting records of Next Mobile, Inc. for income and withholding taxes for the period from January 1, 2008 to December 31, 2008.

- **Memorandum dated May 6, 2004**[2] was issued by **Revenue District Officer** Raul Vicente L. Recto, to **RO Mariano Boliche** and **Group Supervisor (GS) Marcos Medalla** referring Next Mobile, Inc.'s case for continuance of investigation.

- **Memorandum dated July 18, 2005**,[3] prepared by **RO Mariano Boliche** and noted by **GS Marcos Medalla**, recommended the issuance of assessment notices against Next Mobile, Inc.

- On September 26, 2005, Next Mobile, Inc. received a Preliminary Assessment Notice dated September 16, 2005,[4] to which it filed a reply.[5]

- On October 25, 2005, Next Mobile, Inc. received Formal Letters of Demand dated October 7, 2005 and October 17, 2005 with Assessment Notice/Demand No. 43-734 dated October 17, 2005[6] to which it filed a Protest on November 23, 2005.

Considering that no **LOA** was ever issued specifically authorizing **RO Mariano Boliche** to conduct an audit investigation of Next Mobile, Inc., it is my view that the Formal Letters of Demand dated October 7, 2005 and October 17, 2005 and the Assessment Notices, all dated October 17, 2005 against Next Mobile, Inc. are void *ab initio*.

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[1] Exhibit "1", BIR Records, p. 1.
[2] Exhibit "5", BIR Records, p. 33.
[3] Exhibit "27", BIR Records, pp. 287-288.
[4] Exhibit "26", BIR Records, pp. 292-295.
[5] Paragraph I(9), Joint Stipulation of Facts and Issues, CTA Case No. 7965 Docket, p.146.
[6] Exhibits "G" to "G-4", CTA Case No. 7965 Docket, pp. 372-379.

The Court's authority to pass upon the validity of an audit investigation despite the parties' failure to raise such issue is no longer novel. In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[7] the Supreme Court declared, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax appeals, the CTA is not bound by the issued specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
>> 'SECTION 1. Rendition of judgment. - x x x In deciding the case, the Court may not limit itself to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)

For want of valid LOA, *Lancaster* ultimately resolved to declare the assessment void, *viz.*:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID IIIT98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. <u>**The assessment is void for being issued without valid authority.**</u> Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 1998." (Boldfacing and underscoring supplied)

The National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made.[8] Section 6 thereof provides:

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[7] G.R. No. 183408, July 12, 2017.
[8] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
>
> (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" *(Boldfacing and underscoring supplied)*

Truth to tell, **a Bureau of Internal Revenue (BIR) officer cannot simply subject a taxpayer to audit without valid letter of authority issued for that purpose.** Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

Section 6 of the NIRC of 1997, as amended, is unambiguous in requiring an authority from the CIR or from his duly authorized representative before an examination of a taxpayer may be made. The "authorized representative" contemplated by law who may issue an LOA is no less than a **Revenue Regional Director**. The power to issue an LOA may not be delegated by the CIR or the Revenue Regional Director to any other officer.[9]

More interesting, in *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[10] the Supreme Court judiciously held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the **Revenue Regional Director** and emphasized that the Referral Memorandum issued by an **RDO** directing another RO to continue with the examination of Composite Materials, Inc.'s (CMI)

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[9] The pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation, G.R. No.* 156208, September 26, 2006, is analogously applied in this case.
[10] G.R. No. 238352, September 12, 2018.

records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> x x x
>
> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." *(Boldfacing and underscoring supplied)*

In the case at bar, the authority of RO Mariano Boliche to continue the audit and investigation of Next Mobile, Inc. was undeniably pursuant to the Memorandum dated July 18, 2005 signed by **Revenue District Officer** Raul Vicente L. Recto. While the Memorandum cannot be accorded the same legal effect as an LOA (as precisely, any re-assignment of cases requires the issuance of a new LOA), its fatal infirmity is further highlighted by the fact that it was signed and issued by the Revenue District Officer and not by the Revenue Regional Director.

In fine, the assessment issued pursuant to the Memorandum dated July 18, 2005 is void. Being a void assessment, the same bears no valid fruit[11] and must be slain at sight.

All told, I VOTE to (1) DENY the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit; (2) GRANT The Petition for Review filed by Next Mobile, Inc.; (3) REVERSE and SET ASIDE the assailed Amended Decision dated October 13, 2017 and Resolution dated May 9, 2018 of the Court in Division; (4) CANCEL and WITHDRAW the Formal Letters of Demand dated October 7, 2005 and October 17, 2005 and the Assessment Notices, all dated

[11] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

October 17, 2005; and, (5) REVERSE and SET ASIDE the 1st Notice dated July 24, 2009.

ROMAN G. DEL ROSARIO
Presiding Justice