REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

LEPANTO CONSOLIDATED MINING COMPANY,
Respondent.

CTA *EB* NO. 1962
(CTA Case No. 8970)

Present:

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

Promulgated:

JUN 30 2020
3:26 p.m.

x- x

DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on September 19, 2018 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the setting aside of the April 18, 2018 *Decision*[3] and October 11, 2018 *Resolution*[4] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8970 entitled *"Lepanto Consolidated Mining Company vs.*

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[1] *Rollo*, CTA EB No. 1962, pp. 7-20.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 26-47.
[4] *Id.*, pp. 48-56.

Commissioner of Internal Revenue", and the promulgation of another judgment ordering the respondent to pay the assessed deficiency taxes in the aggregate amount of Php46,461,056.54 plus interest, surcharge, and penalties.

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[5] dated April 18, 2018:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated December 15, 2014 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

Resolution[6] dated October 11, 2018:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The Facts

As culled from the records of this case, petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

On the other hand, respondent Lepanto Consolidated Mining Company (LCMC) is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals, with principal place of business at 21 /F Lepanto Bldg., 8747 Paseo de Roxas St., Barangay Bel Air, Makati City. It is a registered taxpayer with Taxpayer Identification Number (TIN) 000-160-247-000. Respondent

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Decision dated April 18, 2018, p. 27.

LCMC is also registered with the Board of Investments (BOI) as an export producer of gold bullion.[8]

On March 3, 1990, respondent LCMC entered into a Mineral Production Sharing Agreement with the Republic of the Philippines and Far South East Gold Resources, Inc., the primary purpose of which is to provide for the exploration, development and commercial utilization of certain mineral deposits existing within the contract area, with all necessary services, technology and financing to be furnished or arranged for by the contractors in accordance with the provisions of the agreement; and the contractors shall not acquire any title to lands encompassed within the contract area.[9]

On April 14, 2010, respondent LCMC filed its Annual Income Tax Return. Likewise, respondent filed its Quarterly VAT Returns for the second, third, and fourth quarters of CY 2009 on July 23, 2009, October 26, 2009, and January 25, 2010, respectively; and its Amended Quarterly VAT Return for the first quarter of CY 2009 on July 9, 2009.[10]

On September 24, 2010, respondent LCMC received Letter of Authority No. eLA201000014924 (LOA-121-2010-00000092) for the examination of its books of accounts and other accounting records for all internal revenue taxes covering the period January 1, 2009 to December 31, 2009. Consequently, petitioner CIR issued an undated Checklist of Requirements and First Request for Presentation of Records.[11]

Subsequently, petitioner CIR and respondent LCMC allegedly executed Waivers of Statute of Limitations on January 27, 2012 and on September 16, 2013.[12]

Thereafter, petitioner CIR informed respondent LCMC that after the tax investigation, it was found that the latter had deficiency taxes due; thus, an informal conference was held.[13]

On November 21, 2013, petitioner CIR sent a Preliminary Assessment Notice (PAN), assessing respondent LCMC for deficiency income tax (IT), value-added tax (VAT), withholding

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[8] *Rollo*, Decision dated April 18, 2018, pp. 26-27.
[9] *Id.* at 27.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 28.
[13] *Id.*

tax on compensation (WTC), expanded withholding tax (EWT), final tax (FT) on interest income, fringe benefit tax (FBT), documentary stamp tax (DST), and excise tax (ET) in the amounts of Php11,203,399.31, Php13,439,432.72, Php13,638,881.78, Php16,894,065.71, Php11,373,355.36, Php2,822,884.46, Php1,683,033.46, and Php1,768,662.38, respectively.[14]

On March 12, 2014, respondent LCMC received from petitioner CIR a Formal Letter of Demand (FLD) dated March 11, 2014, assessing the former with alleged deficiency IT, VAT, WTC, EWT, FT, DST, and ET tax for CY 2009 in the reduced aggregate amount of Php46,461,056.54.[15]

Respondent LCMC protested the FLD and submitted additional documents in support of the protest dated April 11, 2014.[16]

Subsequently, petitioner CIR issued the Final Decision on Disputed Assessment (FDDA) and Audit Result/Assessment Notice, all dated December 15, 2014, which respondent LCMC received on December 15, 2014. Said FDDA assessed the latter with alleged deficiency IT, VAT, WTC, EWT, FT, and ET in the amounts of Php7,442,011.38, Php14,938,556.32, Php5,239,189.93, Php4,479,969.62, Php5,035,956.72, and Php309,268.21, respectively.

Hence, respondent LCMC filed a Petition for Review in the Court in Division through registered mail on January 6, 2015 and received by the same on January 14, 2015.

After the trial, the Court in Division cancelled and set aside the FDDA dated December 15, 2014 in the assailed Decision and Resolution. Thus, petitioner CIR filed the instant Petition for Review on November 19, 2018 after this Court granted[17] its motion[18] for extension of time to file said petition.

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[14] *Rollo*, Decision dated April 18, 2018, p. 28.
[15] *Id.* at 28.
[16] *Id.*
[17] *Id.*, Minute Resolution dated November 6, 2018, p. 6.
[18] *Id.*, Motion for Extension of Time to File Petition for Review, pp. 1-4.

On December 17, 2018, this Court directed[19] respondent LCMC to file its Comment[20] on said petition which the latter submitted on January 17, 2019.

On January 24, 2019, this Court gave due course on said petition and required the parties to submit their respective memoranda. On March 21, 2019, respondent LCMC submitted its Memorandum [21] while petitioner CIR submitted his Memorandum[22] on March 21, 2019.

Thus, with the submission of their respective memoranda, the Court deemed the case submitted for decision.[23]

The Issue

> Whether the Court in Division erred in declaring that petitioner CIR's right to assess respondent LCMC for the alleged deficiency IT, VAT, WTC, EWT, FT, and ET has already prescribed.

Arguments of Petitioner CIR[24]

Petitioner CIR argues that his basic right to fair play and due process was violated when the Court in Division ruled on the matter of the validity of the waiver which was not raised as an issue by respondent in its Petition for Review, Pre-Trial Brief or in the Court's Pre-Trial Order. The only issue included in the aforesaid pleadings was the correctness of the deficiency tax assessments.

Petitioner further argues that respondent LCMC may not raise an issue for the first time on appeal such as the validity of the waiver which was not questioned in the administrative protest.

Petitioner likewise points out that, despite the issue on validity of waiver not being joined by the pleadings nor raised in the court proceedings, still the waiver was accorded validity

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[19] *Rollo*, Resolution dated December 17, 2018, pp. 58-59.
[20] *Id.*, pp. 60-77.
[21] *Id.*, pp. 86-105.
[22] *Id.*, pp. 106-122.
[23] *Id.*, Resolution dated April 16, 2019, pp. 125-126.
[24] *Supra.*, Note 22.

by the parties because it was actually received by respondent LCMC.

Arguments of Respondent LCMC[25]

Respondent LCMC argues that the validity of the waiver of prescription is necessarily included in determining the validity of the deficiency assessment and such waiver was presented and offered by petitioner CIR himself.

Respondent LCMC further argues that even if the validity of waiver of prescription is not a stipulated issue in this case, the Court in Division may still rule on the same.

Respondent insists that the waiver of prescription is null and void because petitioner CIR failed to prove that the person who signed the purported waiver was duly authorized by it, hence, his to right to assess the alleged tax deficiencies had already lapsed.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is within the Court's jurisdiction.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[26] The jurisdiction of the CTA over tax assessments is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other

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[25] *Supra.*, Note 21.
[26] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> laws administered by the Bureau of Internal Revenue; (*Emphasis supplied*)

Similarly, Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals states:

> "SEC. 3. *Who may appeal; period to file petition.* –
>
> xxx xxx xxx
>
> (b) **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." (*Emphasis supplied*)

Basic hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[27]

The records of the case reveal that petitioner received the Court in Division's assailed Resolution dated October 11, 2018, which resolved his motion for reconsideration, on October 18, 2018. Thus, petitioner has fifteen (15) days or until November 2, 2018 within which to file the required PFR. However, petitioner filed a Motion for Extension of Time to File Petition for Review[28] on October 31, 2018 for an additional period of fifteen (15) days or until November 17, 2018 which

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[27] *Philip L. Go et al. v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012.

[28] *Rollo*, pp. 1-4.

was granted[29] by this Court. However, the latter date fell on a Saturday and the next working day was November 19, 2018. Hence, the filing of the instant petition on November 19, 2018 was proper giving this Court jurisdiction to take cognizance of the same.

Now, on the substantive aspect of said petition, the Court notably observed that petitioner raised no novel defenses and his arguments mirrored substantially the same matters elevated at the Court in Division. But just to highlight anew the disquisition in the original ponencia, the Court elucidates as follows:

On petitioner CIR's questioning the action of the Court in Division in deciding matters not raised as issue by the parties in the course of the trial, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> SECTION. 1. *Rendition of judgment.* - The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
>
> **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**. (*Emphasis supplied*)

The above provision allows this Court or the Court in Division to rule on related issues necessary for the orderly disposition of the case although not stipulated earlier by the parties. Such provision was emphasized in the case of

[29] *Id.*, Minute Resolution dated November 6, 2018, p. 6.

Commissioner of Internal Revenue v. Lancaster Philippines, Inc.[30] which was cited in the assailed resolution.

Petitioner should also be aware that the issue on the validity of the waiver of prescription is necessary to dispose the issue on the validity of the tax assessment as it is intricately linked with the Court acquiring jurisdiction on the case.

Moreover, Section 1, Rule 9 of the Rules of Court provides:

> "Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction** over the subject matter, that there is another action pending between the same parties for the same cause, or that **the action is barred** by a prior judgment or **by statute of limitations**, the court shall dismiss the claim." (*Emphasis supplied*)

In *China Banking Corporation v. Commissioner of Internal Revenue*[31] (*China Banking* case), citing the abovementioned provision, the Supreme Court ruled that when the pleadings or the evidence on record show that the claim is barred by prescription, the rule against raising the defense of prescription for the first time on appeal does not apply, to wit:

> "**If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense**. In *Heirs of Valientes v. Ramas,* we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.
>
> xxx xxx xxx
>
> *BPI* thus provides an exception to the rule against raising the defense of prescription for the first time on appeal: the exception arises **when the pleadings or the**

[30] G.R. No. 183408, July 12, 2017.
[31] G.R. No. 172509, February 04, 2015.

> **evidence on record show that the claim is barred by prescription.**"

The records of the case reveal, per the testimony of petitioner's witness, Ms. Teresita Villamor, that she could not ascertain the identity of the person who received the first waiver. Further, the Court in Division found that said witness was not the one who served such waiver and had no knowledge as to who received the same.[32]

It is very clear from the factual findings narrated in the assailed decision that the waiver had defects, hence, it did not extend the prescriptive period for petitioner CIR's right to assess respondent LCMC.

Thus, following the rationale of the *China Banking* case that when prescription was evident in the pleadings and in the evidence presented during the trial of the case, the Court in Division was mandated to dismiss the case even if such issue was not raised in the parties' pleadings or Court-issued orders.

Petitioner CIR should also be aware that the Court is not confined solely to the issues raised by the party-litigants. It can delve on other issues or matters related to the *lis mota* of the case which will help in its complete resolution. As held in the case of *Salvador Comilang v. Francisco Burcena and Mariano Burcena*[33] and we quote:

> "**Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law**. Indeed, the Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned. **Section 8, Rule 51** of the 1997 Rules of Civil Procedure provides:
>
>> SEC. 8 *Questions that may be decided.* No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, **or closely related to or dependent on an assigned error and properly argued in the brief**, save as the court may pass upon plain errors and clerical errors.

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[32] *Rollo*, Decision dated April 18, 2018, pp. 42-46.
[33] G.R. No. 146853, February 13, 2006.

> Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) **grounds not assigned as errors but affecting jurisdiction over the subject matter**; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which **is necessary in arriving at a just decision and complete resolution** of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are **matters of record having some bearing on the issue submitted** which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but **closely related to an error assigned**; and (f) matters not assigned as errors on appeal but **upon which the determination of a question properly assigned, is dependent**." (*Emphasis supplied*)

In the instant case, the issue on the validity of the waiver was interwoven with prescription which affects directly the jurisdiction of this Court. Thus, the Court in Division did not err in ruling upon a matter not raised by the parties during the trial of the case.

The issue that affects the jurisdiction of this Court is an exception to the rule on prohibition as to matters being raised for the first time on appeal, as held in *Marilou Punongbayan-Visitacion v. People of the Philippines et al.*[34], *viz*:

> It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process. Nonetheless, there are also exceptions to the said rule. In *Del Rosario v. Bonga*, the Court explained that there are instances that issues raised for the first time on appeal may be entertained, viz:
>
> > Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments

[34] G.R. No. 194214, January 10, 2018.

> affecting the issues, or when the issues raised present a matter of public policy.

As to petitioner CIR's argument that the waiver was accorded validity by the parties because it was actually received by respondent LCMC, the factual findings of the Court in Division reveal otherwise.

As discussed above, the testimony of Ms. Teresita Villamor reveals that she could not ascertain who received the first waiver and she testified before the Court in Division that she was not the one who served such waiver and had no knowledge as to who received the same.

Petitioner CIR should be aware that these are all factual findings of the Court in Division and in the absence of any allegation of grave abuse of discretion on the part of the latter, such findings must stay. In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*[35], the Supreme Court ruled that:

> "...it is fundamental that **the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion** considering that the members of the Division are in the best position to analyze the documents presented by the parties..." (*Emphasis supplied*)

Thus, absent any allegation from the parties that the Court in Division committed grave abuse of discretion in the determination of said factual findings, this Court has no reason to disturb the decision rendered by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed April 18, 2018 *Decision*[36] and October 11, 2018 *Resolution*[37] are hereby **AFFIRMED.**

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[35] G.R. No. 188016, January 14, 2015.
[36] *Supra*, Note 3.
[37] *Supra*, Note 4.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

(I join PJ's Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join PJ's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

(I join PJ's Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(with Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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 case was 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,*	**CTA EB NO. 1962** (*CTA Case No. 8970*)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTANEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *JJ.*
LEPANTO CONSOLIDATED MINING COMPANY, *Respondent.*	Promulgated: JUN 30 2020 3:26 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent on the *ponencia*.

I submit that the two (2) Waivers are valid and sufficient to extend the three (3)-year prescriptive period to assess respondent for deficiency taxes as provided under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In holding that the First Waiver is invalid and did not extend the period for assessing respondent for deficiency taxes, the *ponencia* opined: (1) that petitioner failed to prove the identity of the person who received the First Waiver on behalf of respondent, after its acceptance by petitioner; and, (2) that petitioner's own witness, Teresita Villamor, was not the one who served such Waiver and that she had no knowledge as to who actually <u>received</u> the same on behalf of the respondent.

I submit that respondent's actions, subsequent to the issuance of the Waivers, showed respondent's implied admission of their validity.

<u>One</u>. Respondent never questioned the identity and authority of the person who received the First Waiver on its behalf. Instead, records show that respondent freely and voluntarily executed the Second Waiver prior to the expiration of the First Waiver. Interestingly, the First Waiver, after its acceptance by petitioner, appears to have also been received by a person whose identity is known to respondent. The person who affixed his initial below the name Ma. Lourdes B. Tuason (respondent's Vice-President and Treasurer), who executed the First Waiver, also appears as the

WAIVER OF THE STATUTE OF LIMITATION
UNDER THE NATIONAL INTERNAL REVENUE CODE

I, **Ma. Lourdes B. Tuason, Vice President/Treasurer of LEPANTO CONSOLIDATED MINING CO.** request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its all internal revenue tax liabilities for the year 2009. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of above tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than December 31, 2013.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund on such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.

The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue.

Executed this <u>27th</u> day of <u>January, 2012</u> in <u>Makati City</u>, Philippines. **EXHIBIT** R-3

NOV 24 2015
RESPONDENT

Ma. Lourdes B. Tuason
Vice President/Treasurer

Witness   Witness

ACCEPTED BY

KIM S. JACINTO HENARES
Commissioner of Internal Revenue

By:

ALFREDO V. MISAJON
OIC-Assistant Commissioner
Large Taxpayers Service

DATE

Witness

ACKNOWLEDGEMENT

Republic of the Philippines)
CITY OF MAKATI) S.S.

In the City of Makati, on this ______ day JAN 31 2012 ______, personally appeared before me ______, with Community Tax Certificate No. ______ issued at ______ on ______ in his/her capacity as ______ of ______, known to me and to me known to be the same person who executed the foregoing waiver for and in behalf of the said taxpayer, and he/she acknowledge to me that the same is the voluntary act and deed of ______, and that he/she is duly authorized to sign the same.

WITNESS MY HAND AND SEAL at the place and on the date first above written.

ATTY. GERVACIO B. ORTIZ JR.
NOTARY PUBLIC
UNTIL DECEMBER 31, 2012
ROLL OF ATTORNEY NO. ______
MCLE COMPLIANCE ______
IBP NO. 656 ______
PTR NO. 31731 ______ MAKATI CITY

CERTIFIED TRUE COPY

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person who received said First Waiver on behalf of respondent, as evidenced by his/her initial at the bottom portion of the First Waiver.

Moreover, the very same initial of the person who received the First Waiver, after its acceptance by petitioner, was also affixed in the Second Waiver, again right below the name and signature of Ms. Tuason.

In executing the Second Waiver, the logical conclusion is that respondent actually recognized the validity of the First Waiver, including the identity and authority of the person who actually received the First Waiver on its behalf.

Two. Respondent **failed to impugn the validity** of the Waivers at the earliest possible opportunity.

In *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*,[1] the Supreme Court emphasized that **estoppel applies against a taxpayer who did not raise at the earliest opportunity the invalidity of the waiver**, *viz.*:

> *"Estoppel similarly applies in this case.*
>
> Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.
>
> Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. ***First,*** **respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN.** It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals. In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers, when it stated:
>
>> This has reference to the Final Assessment Notice ("[F]AN") issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, **five days after the waiver we issued which was valid until November 30, 2008 had prescribed**. (Emphasis

[1] G.R. No. 227544, November 22, 2017.

> supplied)" *(Additional boldfacing and underscoring supplied)*

In the present case, respondent never impugned the validity of the Waivers in its protest to the Preliminary Assessment Notice (PAN),[2] protest to the Final Assessment Notice (FAN),[3] and its Petition for Review[4] filed before the Court in Division.

The foregoing protests and Petition for Review speak for themselves, that is - - respondent neither raised the invalidity of the Waivers nor questioned the identity and authority of the person who received the First Waiver on its behalf. Having failed to raise the Waivers' invalidity at the earliest possible opportunity, respondent is estopped from belatedly questioning the Waivers' validity in its Memorandum filed before the Court in Division.

Even assuming that the First Waiver is defective, records show that petitioner and respondent continued to deal with each other despite having knowledge of the infirmity attendant to the First Waiver; hence, both parties are in *pari delicto,* in which case, the Waivers' validity should be upheld.

Indeed, the validity of a defective waiver may be upheld if there is a finding that both the Bureau of Internal Revenue (BIR) and taxpayer are *in pari delicto* in causing the deficiencies of the waiver. The pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)***[5] is thus instructive:

> "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. Xxx.
>
> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that

[2] BIR Records, pp. 1569 to 1562.
[3] BIR Records, pp. 2215-2226.
[4] Division Docket, pp. 8-24.
[5] G.R. 212825, December 7, 2015.

taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. 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.

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 <u>delivered them to petitioner</u>, 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, **<u>after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused</u>. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.**

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith." *(Boldfacing and underscoring supplied)*

In *Asian Transmission Corporation vs. Commissioner of Internal Revenue*,[6] the Supreme Court was categorical in holding that the **taxpayer has the primary responsibility for the proper preparation of the waiver** of the prescriptive period for assessing deficiency taxes and that the Commissioner of Internal Revenue may not be solely blamed for any defects in the execution of the waiver and that **the taxpayer, after having benefitted from the defective waivers, should not be allowed to assail them**, *viz.*:

> "We agree with the holding of the CTA *En Banc* that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile Inc.* The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, **a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver.** Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates.
>
> Moreover, the principle of estoppel was applicable. **The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse**. Xxx:
>
> xxx.
>
> Thus, the CTA *En Banc* did not err in ruling that **ATC, after having benefited from the defective waivers, should not be allowed to assail them**. In short, the CTA En Banc properly applied the equitable principles of in *pari delicto*, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile case." (Boldfacing and underscoring supplied)*

In applying the principle of estoppel as enunciated in *Next Mobile,* the Court should not focus on the number of Waivers executed by the taxpayer. A taxpayer may have executed only one Waiver, albeit defective, yet if it **failed to impugn** the same at the earliest possible opportunity, and instead benefited therefrom as it was given additional time to respond to the notices issued by the BIR and to substantiate the discrepancies found therein, **thereby delaying the issuance of the PAN and FAN**, the taxpayer should

[6] G.R. No. 230861, September 19, 2018.

be **estopped** from claiming that the Waiver is invalid and that the prescriptive period to assess was not extended.

The principle of estoppel enunciated in *Next Mobile* is applicable to the present case. Respondent, by deliberately issuing two (2) successive Waivers, deriving benefits therefrom through the additional time and opportunities to gather and submit documents thereby postponing the issuance of the assessment notices; and by failing to impute their validity at the earliest possible opportunity, altogether **estopped** it from claiming that the Waivers are invalid and that the prescriptive period to assess was not extended.

There is also a view that the Waivers are void for they failed to specify the type and amount of tax due against respondent. Indeed, I am not unaware of the form of the Waiver as prescribed in RMO No. 20-90, *viz.*:

> "WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE
>
> ______________________________ in consideration of the approval by the Commissioner of Internal Revenue of my **request for re-investigation and/or reconsideration of my pending internal revenue case involving the assessment of the sums of** ______________________ **as** ______________________ **for the years** ____________________, hereby waive the running of the prescriptive period provided for **in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code**, and consent to the assessment and collection of the taxes which may be found due after reinvestigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ____________, 19___.
>
> **The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment.** It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.
>
> xxx." *(Boldfacing supplied)*

A Waiver may be executed to: (i) extend the prescriptive period to **assess** a taxpayer for deficiency taxes; **or** (ii) extend the prescriptive period to **collect**, after the issuance of a FAN against a taxpayer. **In the former case, the Waiver is executed prior to the issuance of the FAN**, to give the taxpayer additional period to respondent to the informal assessment of the Bureau of Internal Revenue (BIR). In the latter case, the Waiver is usually executed after the taxpayer has filed a protest to the FAN by way of a request for reinvestigation, to extend the period to collect while giving the BIR sufficient time to review the documents submitted in support of the protest.

In the first instance, the taxpayer could not be expected or be required to indicate the specific type and amount of tax in the Waiver. During the audit stage, there is yet no certainty as to the type and amount of tax that the taxpayer will eventually be assessed. Precisely, a Waiver is requested to give BIR ample time to finish its audit, formalize its assessment and issue the FAN. Thus, **Waivers executed at this stage of the assessment process indicate "all internal revenue taxes" as it is not possible for the taxpayer to state the specific type and amount of tax to be covered by the Waiver as said information are not yet available during that time.** In short, **how could the taxpayer be expected to specify the type and amount of tax when at the time of the execution of the Waiver, the FAN has not been issued?**

In the second instance, the Waiver is executed by the taxpayer after it has filed a Protest to the FAN (with request for reinvestigation), to give sufficient time to respondent to review the documents that the taxpayer has submitted in support of the protest. Without the Waiver, the prescriptive period to **collect** the taxes assessed in the FAN may lapse. At this stage, the taxpayer can already indicate in the Waiver the type and amount of tax as the same has been determined and fixed in the FAN. Indeed, the afore-cited format of Waiver as provided in RMO No. 20-90, which requires the type and amount of tax, unambiguously refers to instances when the FAN has been issued and the taxpayer is already at the stage when he is requesting for a reinvestigation or reconsideration, as evinced by the following phrases:

> "xxx approval by the Commissioner of Internal Revenue of my request for **re-investigation and/or reconsideration of my pending internal revenue case** involving the assessment of the sums of ____________________ as ____________________ for the years ____________________, xxx." *(Boldfacing supplied)*

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In the present case, respondent executed the Waivers prior to the issuance of the FAN; hence, respondent could not be expected to specify the type and amount of tax due that should be covered by the extended period.

At any rate, the format of the Waiver as provided under RMO No. 20-90, which necessitates the type and amount of tax, has been **revised and abandoned**. As stated in Revenue Memorandum Circular (RMC) No. 029-12, the format of the Waiver as prescribed in RMO No. 20-90 should not be used anymore as the same has been revised per Revenue Delegated Authority Order (RDAO) No. 05-01, *viz.*:

> "The provisions of RMO No. 20-90 should be strictly complied with in order for a Waiver to be valid. However, **the Waiver form prescribed in RMO No. 20-90 should no longer be used as the same has been revised per RDAO No. 05-01**.
>
> A copy of the Waiver form prescribed under RDAO No. 05-01 is hereto attached as Annex "A" for reference.
>
> xxx
>
> WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE
>
> I,_______________of ____________________ request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its ____________________ tax liabilities for the year _______. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than ________."

As shown above, the format of the Waiver as prescribed under RDAO No. 05-01, which is the format applicable to respondent, does not require the taxpayer to indicate the specific type and amount of tax.

In sum, I submit that the two (2) Waivers are valid and sufficient to extend the three (3)-year prescriptive period to assess respondent for deficiency taxes.

All told, I VOTE to: (i) PARTIALLY GRANT the Petition for Review filed by the Commissioner of Internal Revenue; (ii) REVERSE and SET ASIDE the assailed Decision and Resolution of the Court in Division; and, (iii) REMAND the case to the Court in Division for the determination of respondent's deficiency tax liabilities.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LEPANTO CONSOLIDATED MINING COMPANY,
Respondent.

CTA EB NO. 1962
(CTA Case No. 8970)

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

Promulgated:
JUN 30 2020 3:26 p.m.

x- -x

CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the instant petition.

I am of the firm belief that courts are not precluded in taking cognizance of an issue which was not stipulated by the parties in the pleadings. It is true that the validity of the Waivers of Statute of Limitations executed on January 27, 2012[1] and on September 16, 2013[2] ("subject Waivers") in this case was not explicitly raised as an issue by Respondent at the administrative level, its Petition for Review[3] filed before the Court in Division, or in the Joint Stipulation of Facts and Issues[4] filed on June 10, 2015. Yet, this does not prevent the Court *a quo* for taking cognizance of such issue, and for ruling thereon.

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1 Exhibit "R-3", BIR records, folder 2, p. 397
2 Exhibit "R-4", BIR records, folder 4, p. 1418
3 Docket, pp. 8-27.
4 *Id.*, pp. 176-186.

Section 5, Rule 10 of the 1997 Rules of Civil Procedure allows issues not raised by the pleadings to be tried by express or implied consent of the parties as if they had been raised in the pleadings, and the court can validly resolve them, to wit:

> "**Sec. 5.** *Amendment to conform to or authorize presentation of evidence.* - **When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.** Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made."[5]

There is express consent to the evidence on an issue not raised in the pleading when the adverse party agrees to its presentation by the other party.[6] There is implied consent when the adverse party fails to object thereto.[7]

Thus, the general rule is this - a judgment must conform to the pleading and the theory of the action under which the case is tried.[8] And yet, a court may rule and render judgment on the basis of the evidence before it, even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. In other words, so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.[9]

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5 *Emphasis supplied.*

6 Agrifina Panganiban v. Sps. Roldan, G.R. No. 163053, November 25, 2009.

7 D.M. Wenceslao & Associates, Inc. v. Freyssinet Philippines, Inc., G.R. No. 166857, September 11, 2009 *citing* Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999.

8 Sps. Mercader v. Development Bank Of The Philippines (Cebu Branch), G.R. No. 130699, May 12, 2000 *citing* Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999 *citing* Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultures de Talisay-Silay, Inc., G.R. No. 91852, August 15, 1995.

9 D.M. Wenceslao & Associates, Inc. v. Freyssinet Philippines, Inc., G.R. No. 166857, September 11, 2009 *citing* Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999.

Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also the basis of issues discussed and the assertions of fact proved in the course of trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended.[10]

Moreover, Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) allows courts in Division to resolve an issue not raised by the parties in their pleadings or memoranda:

> "**RULE 14**
>
> **JUDGMENT, ITS ENTRY AND EXECUTION**
>
> **SECTION 1.** *Rendition of judgment.* – xxx
>
> **In deciding the case, the Court <u>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</u>.** (2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)"[11]

Thus, the court *a quo* is not precluded from considering other related issues, not otherwise stipulated by the parties, which may be necessary to achieve a just, complete and orderly disposition of the case.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.* [12], the Supreme Court opined, *viz.*:

> "**<u>On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative</u>**.
>
> Under Section 1, Rule 14 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 issues 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:

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[10] Bank of America v. American Realty Corporation, G.R. No. 133876, December 29, 1999 *citing* Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultures de Talisay-Silay, Inc., G.R. No. 91852, August 15, 1995.

[11] *Emphasis and underscoring supplied.*

[12] G.R. No. 183408, July 12, 2017.

> SECTION 1. Rendition of judgment. - x xx
>
> 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 the 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."

The issue on the validity of the subject Waivers is intimately connected to one of the issue stipulated by the parties during pre-trial – that is, "whether or not [Respondent] is liable to pay Php46,461,056.54 representing Income Tax, VAT, Withholding Tax on Compensation, Expanded Withholding Tax, Final Tax, Documentary Stamp Tax and Excise Tax Assessment for taxable year 2009"[13]. It is but natural to establish first the validity of the subject waivers, in order to determine whether or not the assessment issued has already prescribed. Initially, the court is mandated to inquire whether there was a valid assessment, before it can proceed to rule on the merits of the assessment.

In this regard, in order to be valid and binding, a waiver under Section 222(b)[14] of the NIRC of 1997, as amended, must be signed by both parties before the lapse of the prescriptive periods to assess, and that the taxpayer must be given a copy of the waiver accepted by the Bureau of Internal Revenue ("BIR").[15] Indeed, in a number of cases[16], the Supreme Court invalidated waivers on the ground that the taxpayer was not given a copy of the accepted waiver.

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[13] Docket, Pre-Trial Order, Issues, pp. 191-192.

[14] SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

xxx xxx xxx

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

[15] *See also* Revenue Memorandum Circular No. 06-05, February 02, 2005.

[16] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004; Commissioner of Internal Revenue v. FMF Development Corporation, G.R. No. 167765, June 30, 2008; Commissioner of Internal Revenue v. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010; Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc., G.R. No. 187589, December 03, 2014; Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

In the instant case, the waiver executed by Respondent on January 27, 2012 ("First Waiver") did not indicate the fact of receipt by Respondent of the accepted waiver. Thus, it cannot be determined whether the waiver was validly accepted before the expiration of the original three-year period, and Respondent was notified of such alleged acceptance.

To say that the existence of the same initial found in the subject Waivers translate to Respondent's recognition of the First Waiver including the identity and authority of the person who allegedly received the First Waiver, is a dangerous notion. It must be abandoned for the Court is without any facts to support this view.

As previously discussed, a **waiver** is anchored on Section 222(b) of the NIRC of 1997, as amended, which states that it **is an agreement between the CIR and the taxpayer** to extend the period within which to issue an assessment. Read together with the principles of law on contracts[17], a waiver (as a contract or an agreement) must have both the consent of the contracting parties.[18] Under Article 1319 of the Civil Code of the Philippines, "consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract". The said article also provides that "acceptance made by letter does not bind the offeror except from the time it came to his knowledge".

Therefore, a waiver cannot be perfected without the acceptance by the BIR (as the offeree) prior to the expiration of the relevant period. Furthermore, the taxpayer must be furnished with a copy of the accepted waiver for the following reasons: (1) to give notice of the acceptance by the BIR, and (2) to signal the perfection of the agreement.[19]

Additionally, a perusal of the First Waiver show that it failed to indicate the exact amount of the tax due to be assessed or collected. In the case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[20], the Supreme Court pronounced that the amount of tax due to be assessed or collected are material details that must be indicated in the waiver in order to reflect the true and valid agreement between the taxpayer and the BIR. Failure to indicate the nature and amount of tax due, as in the instant case, renders the waiver defective.

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[17] Civil Code of the Philippines, Book IV, Title II.

[18] Civil Code of the Philippines, Book IV, Title II, Chapter 2:

Article 1318. There is no contract unless the following requisites concur:
(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established. (1261).

[19] Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 and 201418-19, October 03, 2018 *citing* Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

[20] G.R. No. 212825, December 07, 2015.

To be sure, *Commissioner of Internal Revenue v. Next Mobile*[21] has carved an exception to the strict application of the rules on waivers, due to the peculiar circumstances therein. And yet, the instant case does not fall under the said exception.

First, the defect in the waivers was solely caused by Petitioner himself. If he only furnished Respondent a copy of the accepted waiver, then it should have been valid. Since Petitioner violated his own rules, *pari delicto* does not apply and he must bear the consequence of a defective waiver. And second, Respondent did not benefit from the waivers executed. Quite the opposite, after the execution of the waivers and the following tax investigation, it was found that Respondent had deficiency taxes due in the aggregate amount of Php46,461,056.54.

All told, I vote to **DENY** the Petition for Review filed by the Commissioner of Internal Revenue.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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21 G.R. No. 212825, December 07, 2015.