REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

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

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

Present:

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

Promulgated:
OCT 07 2022 3:08pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution are the following:

1. Respondent Sabre Travel Network (Philippines), Inc.'s (**respondent**'s) "Motion for Partial Reconsideration (of the Decision dated 14 March 2022)"[1] (**MPR**) filed on 31 March 2022, with petitioner Commissioner of Internal Revenue's (**petitioner**'s) "Manifestation"[2] filed on 31 May 2022[3]; and,

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1 Rollo, pp. 161-171.
2 Id., pp. 200-201. The said Manifestation states that petitioner will adopt all legal and factual arguments stated in his MPR as comment to respondent's MPR.
3 Received by the Court on 07 June 2022.

2. Petitioner Commissioner of Internal Revenue's MPR[4] filed on 04 April 2022[5], with respondent's "Comment/Opposition (to CIR's Motion for Partial Reconsideration dated 04 April 2022)"[6] (**Comment/Opposition**) filed on 01 June 2022.

Both MPRs partially assail the Court *En Banc*'s Decision promulgated on 14 March 2022[7] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed on 23 July 2020 by petitioner Commissioner of Internal Revenue is hereby **PARTIALLY GRANTED** and the Decision dated 25 October 2019 and Resolution dated 26 June 2020 of the First Division in CTA Case No. 9532, entitled *Sabre Travel Network (Philippines), Inc. (formerly Abacus Distribution Systems Philippines, Inc.) v. Commissioner of Internal Revenue,* are hereby deemed **MODIFIED** as to the findings on the invalidity of the Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code dated 28 August 2013 and 07 February 2014. Accordingly, let the case records be **REMANDED** to the First Division for the determination of amount due from respondent Sabre Travel Network (Philippines), Inc., if any, with respect to the unprescribed portions of its deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax assessments for calendar year 2010.
>
> **SO ORDERED.**
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> ...

In respondent's MPR, it takes exception from the Court *En Banc*'s ruling that it is estopped from questioning the validity of the Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (**Waivers**) executed on 28 August 2013[8] and 07 February 2014.[9] Additionally, respondent asserts that the Court *En Banc* erred in upholding the validity of the said Waivers despite the absence of the amount and kind of tax due therein.

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4 Rollo, pp. 174-185.
5 Received by the Court on 12 April 2022.
6 Rollo, pp. 191-197.
7 Id., pp. 122-147.
8 Exhibit "P-4", Division Docket, Volume II, p. 859; Exhibit "R-4", BIR Records, p. 1179.
9 Exhibit "P-5", Division Docket, Volume II, p. 860; Exhibit "R-5", BIR Records, p. 1179.

Respondent elaborates that the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[10] (**Next Mobile**) is not applicable in herein case since respondent raised all the supposed defects and infirmities of the Waivers not only the lack of authority of the person executing the same.

Respondent adds that *Next Mobile* is merely an exception to the general rule that a waiver is invalid if it does not comply with the requirements under Revenue Memorandum Order (**RMO**) No. 20-90[11] and Revenue Delegation Authority Order (**RDAO**) No. 05-01.[12] Citing further the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*[13] (**2021 La Flor**), respondent insists that a waiver is in derogation of a taxpayer's right to security against prolonged and unscrupulous investigations and thus must be carefully and strictly construed.

Also citing the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*[14] (**Standard Chartered**), respondent argues that since waivers would result in the derogation of the taxpayer's rights, it should be given the opportunity to invoke its nullity.

Respondent likewise imputes error to the Court *En Banc's* holding that it did not raise the question of invalidity of the Waivers at the earliest opportunity. According to respondent, the question of prescription was raised in its Protest dated 21 January 2015[15] (**Protest**).

Respondent further avers that although the primary responsibility of preparing a waiver lies on the taxpayer, the task of making sure that the same is duly accomplished is still lodged with petitioner pursuant to RDAO No. 05-01.

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

11 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

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

13 G.R. No. 202105, 28 April 2021.

14 G.R. No. 192173, 29 July 2015.

15 Exhibit "P-9", Division Docket, Volume II, pp. 884-894.

Lastly, respondent insists that the Waivers' failure to state the specific kind and amount of tax was already declared vital in the Supreme Court cases of *Standard Chartered, Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*[16] (**Systems Technology**) *and 2021 La Flor.* As such, the Court *En Banc* erred in relying on the testimony of petitioner's witness which, in effect, shifted the burden to respondent even if the defects were unduly caused by petitioner.

On the other hand, petitioner argues that the assessments for expanded withholding tax (**EWT**) and withholding tax on compensation (**WTC**) for the months of January to September of calendar year (**CY**) 2010, have not yet prescribed. Petitioner contends that the three (3)-year prescriptive period under Section 203[17] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, does not apply to EWT and WTC inasmuch as they are not internal revenue taxes hence imprescriptible. Petitioner categorizes the same as assessments issued as penalty for respondent's failure to withhold the correct taxes it is duty-bound to collect as agent.

Relatedly, considering that the EWT assessment has not prescribed, respondent is not entitled to the refund of ₱1,042,579.35 or the amount paid under protest.

As to the assessment for deficiency documentary stamp tax (**DST**), petitioner insists that respondent was informed of the law and the facts upon which the same was based whereas for deficiency WTC, the assessment notice therefor was duly issued to respondent, as evidenced by petitioner's Exhibits "R-8"[18] and respondent's "P-10".[19]

Lastly, petitioner maintains that respondent is already barred from questioning the validity of the Waivers.

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

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

18 Exhibit "R-8", BIR Records, pp. 1447-1452.

19 Amended Assessment Notices for Income Tax, Withholding Tax on Compensation and EWT dated 20 December 2016 and Final Decision on Disputed Assessment ("FDDA") dated 20 December 2016, Exhibit "P-10", Division Docket, Volume II, pp. 895-903.

In respondent's Comment/Opposition to petitioner's MPR, the former counters that as held in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[20] (**2019 La Flor**), the imposition of penalty due to withholding agent's failure to perform its duty does not automatically remove the application of Section 203[21] of the NIRC of 1997, as amended. As such, petitioner must refund to respondent the aggregate amount of ₱1,042,579.35 representing deficiency EWT paid under protest.

We resolve.

After considering the arguments in the parties' separate MPRs, the Court *En Banc* is constrained to deny them.

It must be emphasized that both parties failed to raise any new argument or present novel matter which the Court *En Banc* has not previously scrutinized, studied, and discussed.

A closer examination of both MPRs would reveal that they both contain the very identical arguments which petitioner raised in the Petition for Review before the Court *En Banc* and in respondent's Comment/Opposition thereto. Furthermore, both parties failed palpably to refute the factual and legal justifications laid down in the assailed Decision, as to warrant its modification.

Nevertheless, considering the contentious issues raised in the instant MPRs, the Court *En Banc* would briefly reiterate its reasons for affirming the assailed Decision, as discussed below, in *seriatim*.

RESPONDENT'S MOTION FOR
PARTIAL RECONSIDERATION

As previously held, the Court *En Banc* ruled that respondent is already estopped from questioning the validity of the subject Waivers guided by the Supreme Court's recent pronouncements in *Next Mobile*, *Commissioner of Internal Revenue v. Transitions Philippines Optical*[22]

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[20] G.R. No. 211289, 14 January 2019.
[21] Supra at note 17.
[22] G.R. No. 227544, 22 November 2017.

(**Transitions Optical**) and *Asian Transmission Corporation v. Commissioner of Internal Revenue*[23] (**Asian Transmission**).

Similar to *Next Mobile*, respondent has already benefitted from its execution of the subject Waivers as it was able to defer the issuance of the assessments and thus gained more time to submit its supporting documents. Consequently, the Court *En Banc* could not simply allow respondent to impugn the validity of the subject Waivers after reaping the benefits of their execution. This is especially so considering that the signatory of said Waivers is no less than respondent's President, who, apart from signing respondent's reply[24] to the Preliminary Assessment Notice (**PAN**) and protest[25] to the Formal Assessment Notice (**FAN**), had also signed the income tax[26] (**IT**), value-added tax[27] (**VAT**), WTC[28] and EWT[29] returns subject of the assessments. We echo our findings in the assailed Decision, thus:

> ...
>
> Applying the foregoing cases herein, it is evident that respondent is likewise estopped from questioning the validity of the subject waivers. The applicability of the said cases is further discussed below, *in seriatim*.
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> [I]t is indubitable that respondent was able to defer the issuance of the assessments against it after the execution of the subject waivers. The BIR also relied on the waivers and thus had given respondent more time to submit its documents. Thus, similar to *Next Mobile*, this Court could only conclude that respondent could not have been acting entirely in good faith in impugning its own waivers after having already benefitted therefrom (and allowing petitioner to rely on the same)...
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> ...

As held in *Asian Transmission*, the primary responsibility for the proper preparation of a waiver rests on the taxpayer; hence, petitioner may not be blamed for any defects in the execution thereof.

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23 G.R. No. 230861, 19 September 2018.
24 Exhibit "P-7", Division Docket, Volume II, pp. 867-877.
25 Supra at note 15.
26 Exhibit "P-17", Division Docket, Volume II, pp. 937-939.
27 Exhibits "P-18" to "P-22", id., pp. 970-974.
28 Exhibits "P-27481" to "P-27492", CD.
29 Exhibits "P-27469" to "P-27480", CD.

Lastly, contrary to respondent's claim, in its Protest, it only argued the alleged prescription of the taxes assessed but *not* the supposed invalidity of the subject Waivers. Thus, the Court *En Banc* maintains its conclusion that respondent failed to raise the invalidity of the Waivers at the earliest opportunity (making the case of *Transitions Optical* equally applicable in herein case).

As to respondent's insistence that the Waivers remained invalid for their failure to specify the kind and amount of the tax due, the Court *En Banc* reiterates that the supposed defect alone will not be enough to completely render them invalid. It is noted that the subject Waivers simply followed the form prescribed by RDAO No. 05-01 (both stating that they cover "All Internal Revenue Tax Liabilities for the calendar year ending December 31, 2010"). Likewise, such alleged defect was not raised at the earliest possible opportunity (similar to the supposed lack of notarized written authority in favor of respondent's President).

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

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION

As regards, petitioner's insistence that the EWT and WTC assessments for January to September of CY 2010 have not yet prescribed since the same are imprescriptible (owing to their nature as penalty instead of being internal revenue taxes), the said issue has already been laid to rest in *2019 La Flor*[30] where the Supreme Court ruled that:

> ...
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> It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, **the Court does not agree with**

[30] Supra at note 20; Citations omitted and emphasis supplied.

> **the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.**
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> ...
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> A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. **It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes**, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.
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> ...
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> **Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes.** Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. **Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous**. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes...
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> ...
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> Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. **Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes.**
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> ...

With respect to the arguments on the DST assessment, other than bare allegation, petitioner failed to specify the error of fact or law committed by the Court, either in Division or *En Banc*, in holding that petitioner failed to state the factual basis thereof.

On the other hand, while a supposed copy of the Assessment Notice (**AN**) for WTC appears on the records, petitioner indubitably failed to prove the existence of or present the original thereof.

In sum, the Court *En Banc* finds no cogent reason to modify or disturb the assailed Decision.

WHEREFORE, petitioner Commissioner of Internal Revenue's Motion for Partial Reconsideration filed on 04 April 2022 and respondent Sabre Travel Network (Philippines), Inc.'s Motion for Partial Reconsideration filed on 31 March 2022 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice