REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **JVC (PHILIPPINES), INC.** Respondent.	**CTA EB NO. 1744** **(CTA Case No. 8646)**
JVC (PHILIPPINES), INC. Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1746** **(CTA Case No. 8646)** Present: Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto San Pedro, *JJ.* Promulgated: OCT 14 2019 11:45 a.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* are Petitions for Review filed under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court assailing the following:

1. July 3, 2017 Decision[1] of the CTA First Division[2] the dispositive portion of which reads:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Petitioner is **ORDERED TO PAY THE REDUCED AMOUNT OF ₱38,402,993.86** for the fiscal year ended March 31, 2007, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax Due	25% Surcharge	Total
Income Tax	₱ 15,763,581.88	₱ 3,940,895.47	₱ 19,704,477.35
Value-Added Tax	7,633,313.53	1,908,328.38	9,541,641.91
Expanded Withholding Tax	5,586,908.19	1,396,727.05	6,983,635.24
Final Withholding Tax	112,500.12	28,125.03	140,625.15
Fringe Benefit Tax	1,171,091.37	292,772.84	1,463,864.21
Documentary Stamp Tax	455,000.00	113,750.00	568,750.00
Total	**₱ 30,722,395.09**	**₱ 7,680,598.77**	**₱ 38,402,993.86**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax from July 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱38,402,993.86, and on the 20% deficiency interest which have accrued as stated in (a) hereof, computed from March 31, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

2. November 2, 2017 Resolution[3] denying *both* the Motion for Reconsideration of JVC (Philippines), Inc. and the Motion for Partial Reconsideration of the Commissioner of Internal Revenue for lack of merit.

THE FACTS

The facts, condensed from the appealed decision and the records, are stated below:

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[1] Annex A, Petition for Review, *Rollo* (1744), pp. 17-85.

[2] Penned by Associate Justice Erlinda P. Uy, with a Concurring Opinion by Presiding Justice Roman G. Del Rosario and a Dissenting Opinion by Associate Justice Cielito N. Mindaro-Grulla.

[3] Annex B, Petition for Review, *Rollo* (1744), pp. 86-94.

The Parties

JVC (Philippines), Inc. [JVC] is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Unit 2103, One Global Place, 5th Avenue, Bonifacio Global City, Taguig City.[4] It is engaged in the business of importation, distribution, wholesale marketing, and servicing of finished JVC electronic products, including the importation of kits, parts and components for production, assemble and manufacturing of finished products for both domestic and export market[5] and is operating on a fiscal year basis that ends on the 31st day of March each year.[6]

On the other hand, Commissioner of Internal Revenue (CIR) is vested with authority to exercise the functions of said office, including the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[7]

Relevant Facts

On September 7, 2007, JVC received Letter of Authority (LOA) No. 2007-00006749 dated August 31, 2007 issued by the CIR, authorizing Revenue Officers (RO) Romualdo Plocios, Matias Fadri III, Rene de Veyra and Josephine Gaerlan of Large Taxpayers (LT) District Office No. 122 Makati to examine its books of accounts and other accounting records for all internal revenue taxes for fiscal year ending March 31, 2007.[8]

In the September 7, 2007 First Request for Presentation of Records/Documents, in connection with the investigation JVC was requested to present a checklist of documents for verification and substantiation purposes.[9]

In the January 17, 2008 Second Request for Presentation of Records, JVC was reminded that its compliance with the first requested was still incomplete and was given until January 27, 2008 to comply.[10] Jc

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[4] Decision, *Rollo* (1744), p. 18.
[5] Amended Articles of Incorporation, Exhibit "P-63", Division Docket, Vol. II, p. 1097.
[6] Decision, *Rollo* (1744), p. 18.
[7] *Id.*
[8] *Id.*
[9] Exhibit "R-2", BIR Records, pp. 1739-1740.
[10] Exhibit "R-3", BIR Records, p. 1744.

In a March 11, 2009 Final Request for Presentation of Records, the LTDO again reminded JVC that it had failed to fully comply with the request.[11]

On January 27, 2010, JVC, through its Treasurer Nimpha U. Villaluna, executed its *first* Waiver of Statute of Limitations under the National Internal Revenue Code (NIRC) extending the period to assess not later than September 30, 2010. The waiver was accepted by OIC-ACIR, Large Taxpayer's Service (Excise and LTDO), Zenaida G. Garcia and was notarized on January 27, 2010.[12]

In an August 9, 2010 Memorandum, the Revenue Officers who investigated JVC summarized their audit procedures and findings and recommended the issuance of an Informal Conference Notice.[13]

In an August 15, 2010 letter signed by ACIR Large Taxpayer's Service (Excise and LTDO), Zenaida G. Garcia, JVC was requested to attend an Informal Conference on September 1, 2010.[14] The letter was received by JVC on August 27, 2010.[15]

On September 1, 2010, JVC, through its Treasurer Ronaldo Narciza, executed its *second* Waiver of Statute of Limitations under the NIRC extending the period to assess not later than March 31, 2011. The waiver was accepted by ACIR, Large Taxpayer's Service (Excise and LTDO), Zenaida G. Garcia and notarized on September 1, 2010.[16]

In a February 14, 2011 Memorandum, the Revenue Officers noted the discussion that transpired during the Informal Conference and the execution of the waiver extending the period to assess until March 31, 2011 and recommended the issuance of a Preliminary Assessment Notice (PAN) for JVC's failure to submit documents requested during the Informal Conference.[17]

On March 7, 2011, through its Treasurer Ronaldo Narciza, JVC received a PAN with Details of Discrepancies,[18] which assessed the company for deficiency taxes in the amount of ₱414,760,540.36, inclusive of interests and compromise penalties, for fiscal year ending March 31, 2007, detailed as follows:

Tax Type	**Basic**	**Surcharge**	**Interest**	**Compromise**	**Total**
Income Tax	₱119,277,566.74	0.00	₱88,559,508.45	₱50,000.00	₱207,887,075.19
VAT	97,405,604.82	0.00	76,643,533.44	50,000.00	174,099,138.26

[11] Exhibit "R-4", BIR Records, p. 1749.
[12] Exhibit "R-5", BIR Records, pp. 1754-1756.
[13] Exhibit "R-6", BIR Records, pp. 1989-1995.
[14] Exhibit "R-7", BIR Records, pp. 2054-2055.
[15] Decision, *Rollo* (1744), p. 18.
[16] Exhibit "R-8", BIR Records, p. 2056.
[17] Exhibit "R-10", BIR Records, pp. 2087-2094.
[18] Decision, *Rollo* (1744), p. 19.

Withholding Tax – Compensation (WTC)	10,527,030.19	0.00	8,369,710.03	50,000.00	18,946,740.22
EWT	5,586,908.19	0.00	4,441,974.68	50,000.00	10,078,882.87
FWT	352,500.12	0.00	280,261.74	16,000.00	648,761.86
FBT	1,171,091.37	0.00	931,097.85	25,000.00	2,127,189.22
DST	455,000.00	₱113,750.00	363,002.74	16,000.00	947,752.74
Penalties-Non-filing of MAP/SAWT/LN			0.00	25,000.00	25,000.00
Total	₱234,775,701.43	₱113,750.00	₱179,589,088.93	₱282,000.00	₱414,760,540.36

JVC, accordingly, filed a Reply to the said PAN on March 21, 2011.[19]

On March 30, 2011, JVC received a Final Assessment Notice (FAN), with Assessment Notices and Details of Discrepancies, assessing it deficiency taxes for fiscal year ending March 31, 2007 in the total amount of ₱418,619,866.96, computed as follows:[20]

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱119,277,566.74	0.00	₱90,520,235.58	₱50,000.00	₱209,847,802.32
VAT	97,405,604.82	0.00	78,244,721.46	50,000.00	175,700,326.28
WTC	10,527,030.19	0.00	8,542,757.10	50,000.00	19,119,787.29
EWT	5,586,908.19	0.00	4,533,814.27	50,000.00	10,170,722.46
FWT	352,500.12	0.00	286,056.26	16,000.00	654,556.38
FBT	1,171,091.37	0.00	950,348.67	25,000.00	2,146,440.04
DST	455,000.00	₱113,750.00	370,482.19	16,000.00	955,232.19
Penalties-Non-filing of MAP/SAWT/LN			0.00	25,000.00	25,000.00
Total	₱234,775,701.43	₱113,750.00	₱183,448,415.53	₱282,000.00	₱418,619,866.96

On April 28, 2011, JVC filed its Administrative Protest to the FAN to dispute the deficiency tax assessments.[21] Subsequently, on June 27, 2011, it also filed a Supplemental Protest.[22]

On March 25, 2013, JVC received the Final Decision on Disputed Assessment (FDDA) dated March 21, 2013.[23] In the FDDA, JVC's tax liability was reduced from ₱418,519,866.96 to ₱151,471,763.14, inclusive of interests and compromise penalties, computed as follows:[24]

Tax Type	Amount Due
Income Tax	₱ 67,356,132.66
VAT	67,784,646.39
EWT	12,316,707.47
FWT	263,007.10
FBT	2,596,267.47

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[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at p. 20.
[23] *Id.*
[24] *Id.*

DST	1,130,002.50
Compromise Penalty	25,000.00
TOTAL	**₱ 151,471,763.14**

CTA First Division Proceedings

Aggrieved, JVC filed a Petition for Review with the Court on April 24, 2013 docketed as CTA Case No. 8646.[25]

Within the extended time granted by the Court, the CIR filed his Answer on June 24, 2013,[26] interposing the following special and affirmative defenses, *viz*:

- The right of the CIR to assess did not prescribe in view of the execution of timely waivers extending the period of assessment.[27]

- The PAN, FAN and FDDA are valid since they were issued in accordance with law, rules and jurisprudence.[28]

- JVC is liable to pay its deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, fringe benefit tax, documentary stamp tax and compromise penalty in the total amount of ₱151,471,763.14 for FY ending March 31, 2007 based on the detailed facts alleged.[29]

- The deficiency tax assessments issued against JVC have factual and legal bases.[30]

- The finding of deficiency tax liabilities against JVC is proper in all respects based on the principle that tax assessments are presumed correct and made in good faith.[31]

After the Pre-Trial Conference on August 30, 2013, the parties filed their Joint Stipulation of Facts and Simplification of Issues on November 8, 2013, which was approved by the Court in the Resolution dated November 26, 2013, thereby terminating the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order on January 13, 2014.[32]

During trial, JVC presented the following witnesses:

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[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.* at p. 23.
[29] *Id.* at pp. 23-31.
[30] *Id.* at p. 31.
[31] *Id.* at p. 33.
[32] *Id.*

- Nimpha U. Villaluna, a Director of JVC, formerly its Treasurer and Accounting Manager;[33]

- Maria Georgina J. Soberano, a Tax Principal of R.G. Manabat and Co., the tax adviser of JVC who prepared the Reply to the PAN, the Protest to the FAN and the Supplemental Protest;[34]

- Roehl P. Bautista, Business Process Outsourcing (BPO) Head of Millenium Business Services, Inc. (MBSI), who handled the Electronic Filing and Payment System (EFPS) account of JVC;[35] and,

- Enrico Targa Pizarro, the Court-commissioned Independent Certified Public Accountant (ICPA).[36]

Thereafter, JVC filed its Formal Offer of Evidence (FOE) on March 17, 2015 and rested its case upon final resolution thereof.[37]

The CIR presented Revenue Officer Romualdo I. Plocios as the lone witness. Thereafter, the CIR filed his Formal Offer of Documentary Evidence on January 25, 2016. Upon resolution thereof in the Resolution dated March 8, 2016, respondent rested his case and the Court directed the parties to file their Memoranda within thirty (30) days from notice.[38]

On May 10, 2016, the Memoranda of the parties were separately filed. In the Resolution dated May 19, 2016, the case was submitted for decision.[39]

On July 3, 2017, the Court *a quo* promulgated its decision which partially granted JVC's petition.

On motions for reconsideration, the Court *a quo* denied both motions for lack of merit in a Resolution dated November 2, 2017.[40]

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[33] Exhibit "P-31", Direct Testimony by Way of Judicial Affidavit of Ms. Nimpha U. Villaluna, Division Docket, Vol. I, pp. 207-224.
[34] Exhibit "P-53", Direct Testimony by Way of Judicial Affidavit of Ms. Maria Georgina J. Soberano, Division Docket, Vol. I, pp. 594-604.
[35] Exhibit "P-52", Direct Testimony by Way of Supplemental Judicial Affidavit of Mr. Roehl P. Bautista, Division Docket, Vol. I, pp. 671-678.
[36] Decision, *Rollo* (1744), p. 33; Exhibit "P-56", Amended Judicial Affidavit, Division Docket, Vol. I, pp. 866-883.
[37] Decision, *Rollo* (1744), pp. 33-34.
[38] *Id.* at p. 34.
[39] *Id.*
[40] *Id.* at pp. 86-94.

CTA En Banc Proceedings

On December 6, 2017, after an extension of fifteen (15) days,[41] the CIR filed his Petition for Review docketed as CTA EB No. 1744.[42]

Meanwhile, on December 7, 2017, after an extension of fifteen (15) days,[43] JVC filed its Petition for Review docketed as CTA EB No. 1746.[44]

On December 14, 2017, the Court *En Banc* resolved to consolidate CTA EB Nos. 1744 and 1746.[45]

In a Resolution dated January 18, 2018, the Court *En Banc* ordered JVC to submit the proof of service of its petition to the CIR in CTA EB No. 1746.[46]

On February 8, 2018, JVC filed its compliance to the January 18, 2018 Resolution.[47]

In a Resolution dated March 16, 2018, the Court *En Banc* deemed JVC's compliance insufficient and, thus, gave it a final and non-extendible period of (5) five days to submit the proof of service of the petition in CTA EB No. 1746.[48]

On April 6, 2018, JVC filed a Compliance stating that copies of the Petition for Review were personally served on the parties, *i.e.* the Office of the Solicitor General, Commissioner of Internal Revenue, and the CTA First Division.[49]

In a May 11, 2018 Resolution, the Court *En Banc* noted the JVC's manifestation and deemed JVC's Compliance sufficient. The parties were also ordered to file their comments on the petitions.[50]

On June 1, 2018, JVC filed its Comment while, per records verification, the CIR failed to comply with the Court's order. Accordingly, the Court *En Banc* resolved to give due course to the petitions and ordered the parties to file their Memoranda.[51]

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[41] Minutes of November 22, 2017 *En Banc* Resolution, *Rollo*, p. 5-A.
[42] *Rollo*, pp. 6-13.
[43] Minutes of November 28, 2017 *En Banc* Resolution, *Rollo* (1746), p. 91.
[44] *Rollo*, pp. 92-120.
[45] Minutes of December 14, 2017 *En Banc* Resolution, *Rollo* (1744), p. 97.
[46] *Rollo* (1744), p. 100.
[47] *Rollo* (1744), pp. 101-103.
[48] *Rollo* (1744), pp. 107-108.
[49] *Rollo* (1744), pp. 121-124.
[50] *Rollo* (1744), pp. 130-132.
[51] August 6, 2018 Resolution, *Rollo* (1744), pp. 149-151.

On October 9, 2018, JVC filed its Consolidated Memorandum.[52] The CIR, on the other hand, failed to file his memorandum per records verification.[53]

In a Resolution dated November 15, 2018, the consolidated cases were deemed submitted for decision.[54]

THE ISSUES

JVC prays that the Court *En Banc* grant *in full* the Petition for Review it filed with the Court *a quo*, reverse the July 3, 2017 Decision and the November 2, 2017 Resolution, and cancel the deficiency tax assessment on the following grounds:

1. The assessments are barred by prescription insofar as the two waivers are not valid and binding and, thus, did not toll the running of the three-year period of limitation on the CIR's right to assess JVC;[55] and,

2. Accordingly, the CIR's collection of ₱38,402,993.86, consisting of basic tax and the 25% surcharge, based on the July 3, 2017 Decision is equivalent to a confiscation of property without due process of law.[56]

The CIR, on the other hand, focuses on the merits of the case by stating that the Court *a quo* erred in the following items of the assessment, *viz.*:

1. In cancelling the deficiency income tax and value-added tax (VAT) pertaining to the unaccounted balance of professional fees in the amount of ₱5,610,096.60;

2. In cancelling the deficiency income tax pertaining to the claimed losses in the amount of ₱1,238,543.69;

3. In ruling that JVC is liable only to pay the basic deficiency final withholding tax (FWT); and,

4. In ruling that JVC is not liable to pay the compromise penalty of ₱25,000.[57]

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[52] *Rollo* (1744), pp. 152-194.
[53] *Rollo* (1744), p. 201.
[54] *Rollo* (1744), pp. 203-204.
[55] Petition for Review, *Rollo* (1746), pp. 103-116.
[56] Petition for Review, *Rollo* (1746), pp. 116-118.
[57] Petition for Review, *Rollo* (1744), pp. 8-12.

THIS COURT'S RULING

We deny both petitions for lack of merit.

The Court finds no reason to disturb the findings of the Court a quo upholding the validity of the waivers under the doctrine of the Next Mobile case.

JVC anchors its petition on the position that the assessments are barred by prescription insofar as the two waivers are not valid and binding and, thus, did not toll the running of the three-year period of limitation on the CIR's right to assess JVC.[58]

Specifically, it states that the *first* waiver it executed on January 27, 2010 is invalid because it did not indicate the date of acceptance by the OIC-ACIR, Large Taxpayers Services, Zenaida G. Garcia.[59] Therefore, when the FAN was received on March 30, 2011, the right to assess JVC had already prescribed based on the filing dates of the tax returns summarized in the assailed decision, *viz.*:[60]

INCOME TAX RETURN (BIR FORM 1702)				
Period	**Date Filed**	**Last Day to File Return**[61]	**Last Day to Assess under Section 203**	**Date of Receipt of FAN**
Fiscal year ending March 31, 2007	July 17, 2007[62]	July 16, 2007[63]	July 17, 2010	March 30, 2011

QUARTERLY VAT RETURNS (BIR FORM 2550-Q)				
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return**[64]	**Last Day to Assess under Section 203**	Date of Receipt of FAN
1st Quarter	July 22, 2006[65]	July 25, 2006	July 25, 2009	
2nd Quarter	October 23, 2006[66]	October 25, 2006	October 25, 2009	

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58 Petition for Review, *Rollo* (1746), pp. 103-116.
59 Petition for Review, *Rollo* (1746), pp. 106-107; Consolidated Memorandum, *Rollo* (1744), p 170.
60 July 3, 2017 Decision, *Rollo* (1744), pp. 39-41.
61 Pursuant to Section 77 of the NIRC of 1997, a corporate taxpayer shall file its final adjustment return (annual income tax return) on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year.
62 Exhibit "P-21", ICPA Report, Binder No. 5.
63 July 15, 2007 fell on a Sunday.
64 Section 114(A) of the NIRC of 1997, as amended by Republic Act No. 9337, requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.
65 Exhibits "P-9.1.1" to "P-9.1.2", ICPA Report, Binder No. 1.
66 Exhibits "P-9.2.1" to "P-9.2.3", ICPA Report, Binder No. 1.

3rd Quarter	January 25, 2007[67]	January 25, 2007	January 25, 2010	March 30, 2011
4th Quarter	April 24, 2007[68]	April 25, 2007	April 25, 2010	

EWT RETURNS (BIR FORM 1601-E)				
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return[69]**	**Last Day to Assess under Section 203**	**Date of Receipt of FAN**
April 2006	May 12, 2006[70]	May 10, 2006	May 12, 2009	March 30, 2011
May 2006	June 9, 2006[71]	June 10, 2006	June 10, 2009	
June 2006	July 11, 2006[72]	July 10, 2006	July 11, 2009	
July 2006	August 10, 2006[73]	August 10, 2006	August 10, 2009	
August 2006	September 12, 2006[74]	September 11, 2006[75]	September 12, 2009	
September 2006	October 11, 2006[76]	October 10, 2006	October 11, 2009	
October 2006	November 14, 2006[77]	November 10, 2006	November 14, 2009	
November 2006	December 13, 2006[78]	December 10, 2006[79]	December 13, 2009	
December 2006	January 12, 2007[80]	January 15, 2007	January 15, 2010	
January 2007	February 13, 2007[81]	February 12, 2007[82]	February 13, 2010	
February 2007	March 12, 2007[83]	March 12, 2007[84]	March 12, 2010	
March 2007	April 12, 2007[85]	April 10, 2007	April 12, 2010	

FWT RETURNS (BIR FORM 1601-F)				
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return[86]**	**Last Day to Assess under Section 203**	**Date of Receipt of FAN**

[67] Exhibits "P-9.3.1" to "P-9.3.2", ICPA Report, Binder No. 1.
[68] Exhibits "P-9.4.1" to "P-9.4.3", ICPA Report, Binder No. 1.
[69] For both large and non-large taxpayers, the withholding tax return, whether creditable or final shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year. (Section 2.58(A)(2)(a), Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-03).
[70] Exhibit "P-40-2", Division Docket, Vol. II, p. 1066.
[71] Exhibit "P-41-2", Division Docket, Vol. II, p. 1068.
[72] Exhibit "P-42-2", Division Docket, Vol. II, p. 1070.
[73] Exhibit "P-43-2", Division Docket, Vol. II, p. 1072.
[74] Exhibit "P-44-2", Division Docket, Vol. II, p. 1074.
[75] September 10, 2006 fell on a Sunday.
[76] Exhibit "P-45-2", Division Docket, Vol. II, p. 1076.
[77] Exhibit "P-46-2", Division Docket, Vol. II, p. 1078.
[78] Exhibit "P-47-2", Division Docket, Vol. II, p. 1080.
[79] December 10, 2006 fell on a Sunday.
[80] Exhibit "P-48-2", Division Docket, Vol. II, p. 1082.
[81] Exhibit "P-49-2", Division Docket, Vol. II, p. 1084.
[82] February 10, 2007 fell on a Saturday.
[83] Exhibit "P-50-2", Division Docket, Vol. II, p. 1086.
[84] March 10, 2007 fell on a Saturday.
[85] Exhibit "P-51-2", Division Docket, Vol. II, p. 1088.
[86] See Footnote no. 56.

April 2006	May 10, 2006[87]	May 10, 2006	May 10, 2009	
May 2006	June 8, 2006[88]	June 10, 2006[89]	June 10, 2009	
June 2006	July 10, 2006[90]	July 10, 2006	July 10, 2009	
July 2006	August 10, 2006[91]	August 10, 2006	August 10, 2009	
August 2006	September 8, 2006[92]	September 11, 2006[93]	September 11, 2009	March 30, 2011
September 2006	October 10, 2006[94]	October 10, 2006	October 10, 2009	
October 2006	November 10, 2006[95]	November 10, 2006	November 10, 2009	
November 2006	December 11, 2006[96]	December 11, 2006[97]	December 11, 2009	
December 2006	January 10, 2007[98]	January 15, 2007	January 15, 2010	
January 2007	(none)	February 12, 2007[99]	(not applicable)	
February 2007	(none)	March 12, 2007[100]	(not applicable)	
March 2007	(none)	April 10, 2007	(not applicable)	

QUARTERLY REMITTANCE RETURNS OF FINAL INCOME TAXES WITHHELD ON FRINGE BENEFITS (BIR FORM 1603)				
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return[101]**	**Last Day to Assess under Section 203**	**Date of Receipt of FAN**
April to June 2006	July 6, 2006[102]	July 5, 2006	July 6, 2009	
July to September 2006	October 5, 2006[103]	October 5, 2006	October 5, 2009	March 30, 2011
October to December 2006	January 9, 2007[104]	January 5, 2007	January 9, 2010	
January to March 2007	April 10, 2007[105]	April 5, 2007	April 10, 2010	

[87] Exhibit "P-79-2", BIR Records, p. 1895.
[88] Exhibit "P-80-2", BIR Records, p. 1893.
[89] June 10, 2006 fell on a Saturday.
[90] Exhibit "P-81-2", BIR Records, p. 1892.
[91] Exhibit "P-82-2", BIR Records, p. 1891.
[92] Exhibit "P-23-2", BIR Records, p. 1890; Exhibit "P-22", ICPA Report, Binder No. 5.
[93] September 10, 2006 fell on a Sunday.
[94] Exhibit "P-24-2", BIR Records, p. 1889.
[95] Exhibit "P-25-2", BIR Records, p. 1888.
[96] Exhibit "P-26-2", BIR Records, p. 1887.
[97] December 10, 2006 fell on a Sunday.
[98] Exhibit "P-27-2", BIR Records, p. 1886.
[99] February 10, 2007 fell on a Saturday.
[100] March 10, 2007 fell on a Saturday.
[101] Pursuant to Section 5 of Revenue Regulations (RR) No. 04-02, requires that the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits should be filed on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted. However, the deadline for e-filing shall be five (5) days later than the deadline set therein.
[102] Exhibits "P-19.1.1" to "P-19.1.2", ICPA Report, Binder No. 5.
[103] Exhibits "P-19.2.1" to "P-19.2.2", ICPA Report, Binder No. 5.
[104] Exhibits "P-19.3.1" to "P-19.3.2", ICPA Report, Binder No. 5.
[105] Exhibits "P-19.4.1" to "P-19.4.2", ICPA Report, Binder No. 5.

Furthermore, JVC states that the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.*[106] relied upon by the Court *a quo* is factually different from the present case and is clearly inapplicable. In this case, JVC argues, the CIR is solely at fault for not indicating the date of acceptance for which it is under no obligation to rectify.[107]

We are not persuaded.

First, in *Asian Transmission Corporation v. Commissioner of Internal Revenue*,[108] the Supreme Court recently affirmed the application of *Next Mobile, Inc.*[109] and noted that the taxpayer had reason to let the CIR believe that the waivers it executed were valid since the tolling of the prescriptive periods allowed it more time to prepare for its defense against the assessment, thus:

> "Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse. Indeed, the Court observed in *Commissioner of Internal Revenue v. Next Mobile, Inc.* that:
>
> > 'In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.'
>
> Thus, the CTA *En Banc* did not err in ruling that ATC, after having benefitted from the defective waivers, should not be allowed to assail them. In short, the CTA *En Banc* properly applied the equitable principles of *in pari delicto*, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile, Inc. case*." (*Underscoring supplied and citations omitted*)

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[106] G.R. No. 212825, December 7, 2015.
[107] Petition for Review, *Rollo* (1746), pp. 109-110; Consolidated Memorandum, *Rollo* (1744), pp. 173-180.
[108] G.R. No. 230861, September 19, 2018.
[109] G.R. No. 212825, December 7, 2015.

Indeed, in the present case, when the first waiver was executed on January 27, 2010, the running of the prescription was suspended until September 30, 2010. Then on September 1, 2010, before the expiration of the first waiver, the second waiver was executed by the parties where the period to assess was again extended to March 31, 2011. In other words, the parties were given more than a year to further thresh out the issues of the assessments before the FAN was received on March 30, 2011. Without these two successive waivers, the CIR would have been compelled to issue the FAN much earlier, before prescription could set in. JVC, therefore, benefitted from the extension afforded by the waivers and cannot belatedly assail the waivers when the consequences of the assessment resulted not in its favor.

Second, the Court notes that the infirmity of the first waiver was never raised on the administrative level and even during trial when the case was elevated from the BIR to the Court *a quo*. A review of the arguments set out in the protest, pleadings and other papers filed by JVC to contest the assessment demonstrate a pattern of deliberately avoiding the issue concerning the *first* waiver:

- JVC's reply to the PAN, invoked the defense of prescription, yet significantly failed to discuss the infirmity of the *first* waiver.[110]

- JVC's protest to the FAN extensively discussed the merits of the assessment but also omitted to raise the issue on the invalidity of the first waiver.[111]

- JVC's Petition for Review filed in the Court *a quo* argued that the assessments were barred by prescription under Section 203 of the NIRC but completely overlooked any discussion on the *first* waiver and emphasized only the fact that the *second* waiver was executed after prescription had set in.[112]

- Significantly, Nimpha U. Villaluna, JVC's director who signed the *first* waiver and would have had the competence and personal knowledge to testify on the circumstances surrounding its execution, including any infirmity that should have been brought to the attention of the trial court, omitted to mention in her testimony even its existence.[113]

- JVC's Memorandum in the case below merely reiterated the statements in the petition and again conveniently failed to mention the existence of the *first* waiver much less discuss any defect that would have invalidated the same.[114] gc

[110] Exhibit "P-33", Division Docket, Vol. I, pp. 607-624.
[111] Exhibit "P-34", Division Docket, Vol. I, pp. 634-654.
[112] Division Docket, Vol. I, pp. 15-17.
[113] Exhibit "P-31", Division Docket, Vol. I, pp. 207-225.
[114] Division Docket, Vol. II, pp. 1266-1285.

In fact, it was only *after* the minority opinion of J. Mindaro-Grulla drew attention to the defect in the first waiver when JVC adopted the same position and changed its theory in its Motion for Reconsideration.[115]

In *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*,[116] the Supreme Court explained that a party is prohibited from raising a new matter not threshed out in the administrative proceedings and during the trial of the case, thus:

> "Euro-Phil contends that CIR raised new matters in its Petition for Review with the CTA *En Banc* and does it again in this Petition for Review which should not be allowed by this Court.
>
> We agree.
>
> In the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals*, this doctrine was explained by this Court as follows:
>
>> 'To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court — which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.'
>
> Here, it is not disputed that CIR raised the issue that the alleged failure to present VAT official receipts with the imprinted words 'zero rated' adopting the dissent of Justice Del Rosario, only at the latter stage of the appeal on Motion for Reconsideration of the CTA *En Banc's* decision. Accordingly, with the doctrine that issues may not be raised for the first time on appeal, CIR should not be allowed by this Court to raise this matter.
>
> Moreover, while the issue arose from the dissent of Justice Del Rosario, the law is clear on the matter. Section 108 of the NIRC of 1997 imposes zero percent (0%) value-added tax on services performed in the Philippines by VAT-registered persons to persons engaged in international air transport operations, as it thus provides:
>
> xxx xxx xxx" (*Citations omitted and underscoring supplied*)

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[115] Division Docket, Vol. II, pp. 1388-1398.
[116] G.R. No. 222436, July 23, 2018.

Third, this is clearly a case where *estoppel* operates.

Estoppel is a "prohibition against a present assertion contrary to a past conduct. Estoppel bars a party from alleging or denying a fact, or asserting a right or defense, that contradicts a former position the party has taken in a pleading, testimony, or statement out of court. Estoppel generally applies when one party makes a statement that induces others to act in reliance on it, others do rely on it to their detriment, after which the party making the statement attempts to assert some fact or defense contrary to the statement that would disadvantage the relying party, and so the party attempting to make the assertion is estopped from doing so."[117]

In the case at bench, estoppel bars JVC from adopting a position that tacitly recognized the validity of the *first* waiver and, thus, allowed it to benefit from the CIR's reliance on the same through the extension of the period during which the assessment can be reviewed at the administrative level and, thereafter, take a contrary position on appeal. It is now *estopped* from impugning the validity of the waiver when it remained silent for a considerable period of time on that very issue it is now raising before the Court. By executing the second waiver, it acquiesced to the validity of the first and cannot now take a contrary position to the detriment of the other party who relied on the same.

Fourth, in *Commissioner of Internal Revenue v. Next Mobile, Inc.*,[118] the Supreme Court declared that as a general rule a waiver that did not comply with the requisites for its validity specified in RMO No. 20-90 and RDAO 01-05 was invalid and ineffective to extend the prescriptive period to assess the deficiency taxes. However, due to peculiar circumstances obtaining, the Court treated the case as an exception to the rule, and considered the waivers concerned as valid for the following reasons, viz.:

> First, the parties in this case are *in pari delicto* or 'in equal fault.' *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
>
> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy. Je

[117] Bouvier Law Dictionary, Compact Edition (2011), p. 392.
[118] G.R. No. 212825, December 7, 2015.

> Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.
>
> Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.
>
> Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities." (*Underscoring supplied and citations omitted*)

The principles underlying the *Next Mobile, Inc.* case are applicable *in pari materia* to this case. JVC did not come to the Court with clean hands insofar as it attempted to deflect attention on the existence of the first waiver and the infirmity that tainted it. While JVC insists that it played no part in causing the infirmity and had no obligation to ascertain that the CIR performed the acts incumbent upon him pertaining to the waiver,[119] it is clearly unjust to allow the intentional omission and the technicality to prejudice the government who relied on the efficacy of the waivers. It bears emphasis that JVC, by executing a *second* waiver that extended the prescription to March 31, 2011 after the expiry of the first waiver on September 30, 2010, clearly expected the CIR to rely on the validity of the *first* waiver. Otherwise, the CIR would not have been convinced to agree to a second waiver and a further extension before the FAN was issued. To use the language of the Supreme Court, 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.

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[119] Consolidated Memorandum, *Rollo* (1744), p. 24.

Finally, the arguments raised by JVC in the instant petition have already been settled in the assailed November 2, 2017 Resolution which denied the motions of the parties for lack of merit:

> "After a careful examination and consideration of the respondent's *Motion for Partial Reconsideration*, it is noteworthy that the arguments raised in the said *Motion* are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.
>
> With regard to petitioner's *Motion for Reconsideration*, however, petitioner raises a new matter as it contends that respondent's right to assess has already prescribed. It argues that the first *Waiver of the Statute of Limitations* it executed in favor of the BIR did not validly extend the period for assessment, because the date of acceptance by the BIR was not indicated therein. As for the second *Waiver of the Statute of Limitations*, petitioner argues that it also failed to extend the period for assessment, considering that it was executed beyond the three (3)-year period for assessment.
>
> We are not convinced.
>
> A perusal of the record reveals that petitioner indeed executed a *Waiver of the Statute of Limitations under the National Internal Revenue Code* (First Waiver) on January 27, 2010, wherein petitioner consented to the assessment of taxes on or before September 30, 2010.
>
> Thereafter, petitioner executed another *Waiver of the Statute of Limitations under the National Internal Revenue Code* (Second Waiver) on September 1, 2010, further extending the period to assess until March 31, 2011.
>
> On March 31, 2011, petitioner received a Final Assessment Notice (FAN) with Assessment Notices and Details of Discrepancies.
>
> Subsequently, petitioner filed its Administrative Protest to the FAN with the Bureau of Internal Revenue (BIR), to dispute the deficiency tax assessments against it. In addition, petitioner filed a Supplemental Protest with the BIR on June 27, 2011. It is noteworthy, however, that petitioner did not raise the issue of prescription in its Administrative Protest to the FAN, or in its Supplemental Protest filed with the BIR; particularly on the supposed infirmity of the First Waiver.
>
> It was only in its *Petition for Review* before this Court that petitioner argued that the period to assess has already prescribed. Curiously, however, there was *never* any mention of the alleged invalidity of the *First* Waiver in any of its pleadings. Rather, petitioner relied solely on the fact that the *Second* Waiver was executed beyond the three (3)-year period. It was only in the instant *Motion for Reconsideration* that petitioner raises the issue of the alleged infirmity found in the First Waiver it executed in favor of the BIR.
>
> In the case of *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held that '*it is*

axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.' Thus, petitioner cannot put into issue a defense which it failed to raise in its previous pleadings. It cannot belatedly raise the issue of the alleged invalidity of the First Waiver at this late stage, i.e., only after this Court has already rendered a Decision in this case, especially when the said defense was already available to the petitioner even before it filed its *Petition for Review.*

But even granting that petitioner may be allowed to raise the issue with regard to the First Waiver, petitioner's contention that the assessment has prescribed still fails to persuade Us.

In *Commissioner of Internal Revenue vs. Next Mobile, Inc.* ('Next Mobile case'), the Supreme Court held as follows:

> 'The deficiencies of the Waivers in this case are the same as the defects of the waiver in *Kudos*. In the instant case, the CTA found the Waivers because of the following flaws: (1) they were executed without a notarized board authority; (2) **the dates of acceptance by the BIR were not indicated therein**; and (3) the fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver.
>
> **To be sure, both parties in this case are at fault.**
>
> xxx xxx xxx'

Based on the foregoing, it is clear that the general rule is that when a waiver does not comply with the requisites for its validity specified under Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, there is an exception to such general rule, and the applicability of the said exception is warranted when the following circumstances are present, to wit:

1. The parties are *in pari delicto* or 'in equal fault';
2. The parties came to court not with clean hands;
3. The taxpayer is estopped from questioning the validity of its Waivers;
4. The existence of a highly suspicious situation.

In this case, according to petitioner, the infirmity of the First Waiver is that '*the date of acceptance by OIC-Assistant Commissioner-Large Taxpayers Service Zenaida G. Garcia is not indicated therein.*' Indeed, upon a cursory examination of the said First Waiver, the same does not indicate a date of acceptance of the said BIR official. Clearly, respondent is at fault for not indicating the said date of acceptance.

Nevertheless, petitioner is equally at fault with respondent. Knowing that the First Waiver it executed has no date of acceptance by respondent, petitioner could have easily called the latter's attention, and requested to state such date. Petitioner did not do so for no apparent reason.

Consequently, petitioner, being at fault, should not be allowed to come to Court, since it is not considered to have clean hands, and thus, cannot be allowed to benefit from its own wrongdoing.

Furthermore, petitioner is likewise in estoppel. It executed two (2) Waivers and delivered them to respondent, one after the other. Petitioner allowed respondent to rely on them and did not raise any objection against their validity until the filing of the present *Petition for Review*, insofar as the Second Waiver is concerned, and as regards the First Waiver, only at this stage of the instant case.

Finally, the instant case involves a highly suspicious situation in the execution and acceptance of the subject Waiver, particularly in not observing the procedures therefor as stated in RMO No. 20-90 and RDAO No. 05-01. Both parties cannot feign ignorance of these administrative issuances, and yet the said procedures were not observed by them.

If petitioner had all the intention to give legal effect to the Waivers it executed and respondent had every inclination to perform his duties, both parties could have easily observed the procedures laid down in the subject administrative issuances. The fact that they did not creates a highly suspicious situation, which this Court will likewise not tolerate, nor countenance.

In fine, 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." (*Citations omitted and underscoring supplied*)

Notices and hearings were accorded to JVC in the administrative proceeding before the CIR and during trial before the Court a quo, thus, there is no deprivation of property without due process.

In *Pepsi-Cola Bottling Company v. Municipality of Tanauan*,[120] the Supreme Court *En Banc* explained the nature of taxation and the exercise thereof which is prohibited by the Constitution. It recognized that the power of taxation constitutes a deprivation of property under the due process clause and the taxpayer's right to due process is violated when arbitrary or oppressive methods are used in assessing and collecting taxes. Specifically, the High Court clarified that the taking of the property is in the *lawful* exercise of the taxing power, when the following requisites are met: (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided, thus:

[120] G.R. No. L-31156, February 27, 1976.

> "The plenary nature of the taxing power thus delegated, contrary to plaintiff-appellant's [Pepsi-Cola] pretense, would not suffice to invalidate the said law as confiscatory and oppressive. In delegating the authority, the State is not limited the exact measure of that which is exercised by itself. When it is said that the taxing power may be delegated to municipalities and the like, it is meant that there may be delegated such measure of power to impose and collect taxes as the legislature may deem expedient. Thus, municipalities may be permitted to tax subjects which for reasons of public policy the State has not deemed wise to tax for more general purposes. This is not to say though that the constitutional injunction against deprivation of property without due process of law may be passed over under the guise of the taxing power, <u>except when the taking of the property is in the lawful exercise of the taxing power, as when (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided</u>. <u>Due process is usually violated where the tax imposed is for a private as distinguished from a public purpose; a tax is imposed on property outside the State, i.e., extraterritorial taxation; and arbitrary or oppressive methods are used in assessing and collecting taxes</u>. But, a tax does not violate the due process clause, as applied to a particular taxpayer, although the purpose of the tax will result in an injury rather than a benefit to such taxpayer. Due process does not require that the property subject to the tax or the amount of tax to be raised should be determined by judicial inquiry, and a notice and hearing as to the amount of the tax and the manner in which it shall be apportioned are generally not necessary to due process of law." (*Underscoring supplied and citations omitted*)

The Court finds that JVC's contention of violation of due process[121] is *not* based on any arbitrary or oppressive methods used by the CIR in assessing and collecting the deficiency taxes.

Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support JVC's claim fall short to satisfy the degree of proof needed to convince the Court.[122] In fact, these general allegations are controverted by the evidence on record where it is clearly shown that JVC was given sufficient notice, had several opportunities to present its defense or position in the assessment, presented its evidence and was heard during the trial in the Court *a quo*.

Petitioner CIR failed to raise a new or substantial matter, or compelling reason to justify the reversal or modification of the assailed Decision

[121] Petition for Review, *Rollo*, pp. 116-118; Consolidated Memorandum, *Rollo*, pp. 180-182.
[122] *Carmela Cuizon Y Montalban v. Court of Appeals et al.*, G.R. No. 102096, August 22, 1996.

Finally, the CIR's grounds for the petition on the unaccounted balance on professional fees of ₱5,610,096.60,[123] claimed losses of ₱1,238,543.69,[124] FWT[125] and the compromise penalty[126] are only repetitions of those already declared in his Answer[127] and his Memorandum.[128] Petitioner CIR, by failing to file his Comment and his Memorandum, did not raise any new contentions, factual or otherwise, that could persuade the Court to overturn the assailed holding of the trial court.

After a careful evaluation of the records, more particularly those relating the issue on the validity of the waivers and, consequently, on whether the assessments are barred by the three-year prescription under Section 203 of the NIRC, the Court is convinced that there is no reason to disturb the findings of the Court *a quo*.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The July 3, 2017 Decision and the November 2, 2017 Resolution are hereby **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[123] *Rollo* (1744), p. 9.
[124] *Id.*
[125] *Id.* at p. 10.
[126] *Id.* at p. 11.
[127] Division Docket, Vol. I, pp. 155-156 and 160-162.
[128] Division Docket, Vol. II, pp. 1250-1251, 1254-1255, 1256 and 1258.

(*With all due respect, I maintain my Dissenting Opinion*)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice