REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1616** (CTA Case No. 8479)
- versus -	
TOTAL (PHILIPPINES) CORPORATION, Respondent.	

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TOTAL (PHILIPPINES) CORPORATION, Petitioner,	**CTA EB NO. 1621** (CTA Case No. 8479)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 06 2018 4:18 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review* filed as follows: CTA EB No. 1616,[1] filed by the Commissioner of Internal Revenue (CIR), as petitioner, against Total

[1] EB Docket (CTA EB No. 1616), pp. 7 to 16.

(Philippines) Corporation (TPC), as respondent; and CTA EB No. 1621,[2] filed by TPC, as petitioner, against the CIR, as respondent.

Both *Petitions*, in effect, assail the Decision dated December 22, 2016[3] and Resolution dated March 6, 2017[4], rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8479 entitled "*Total (Philippines) Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

Decision dated December 22, 2016:

> "**WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against petitioner for taxable year 2005 covering deficiency Expanded Withholding Tax and Fringe Benefit Tax is **UPHELD** but in the reduced amount of **Sixteen Million Seventy-Seven Thousand Six Hundred Forty-Five Pesos and 16/100 Pesos (Php16,077,645.16)**, inclusive of the 25% surcharge imposed under *Section 248(A)(1)(3) of the 1997 NIRC*, computed as follows:

TYPE OF TAX	BASIC	25% SURCHARGE	TOTAL
Expanded Withholding Tax			
Supplier at 1%	Php11,589,526.30	Php 2,897,381.58	Php14,486,907.88
Contractor at 2%	451,048.99	112,762.25	563,811.24
Fringe Benefit Tax	821,540.84	205,385.21	1,026,926.05
TOTAL	**PHP12,862,116.13**	**PHP3,215,529.03**	**PHP16,077,645.16**

> In addition, petitioner is also **ORDERED TO PAY:**
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> 1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT and FBT computed from the dates indicated below until full payment thereof *pursuant to Section 249(B) of the 1997 NIRC:*

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[2] EB Docket (CTA EB No. 1621), pp. 8 to 49.

[3] Penned by Associate Justice Lovell R. Bautista, and concurred by Associate Justice Esperanza R. Fabon-Victorino, EB Docket (CTA EB No. 1616), pp. 18 to 42; EB Docket (CTA EB No. 1621), pp. 57 to 81.

[4] Penned by Associate Justice Lovell R. Bautista, and concurred by Associate Justice Esperanza R. Fabon-Victorino, EB Docket (CTA EB No. 1616), pp. 43 to 48; EB Docket (CTA EB No. 1621), pp. 50 to 55.

TYPE OF TAX	BASIC	DEFICIENCY INTEREST COMPUTED FROM
Expanded Withholding Tax		
Supplier at 1%	₱11,589,526.30	January 16, 2006
Contractor at 2%	451,048.99	January 16, 2006
Fringe Benefit Tax	821,540.84	January 16, 2006

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of Php16,077,645.16, representing the basic deficiency EWT and FBT and the corresponding 25% surcharge; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in item (1), computed from March 26, 2012 until full payment thereof *pursuant to Section 249(C) of the 1997 NIRC.*

SO ORDERED."

<u>Resolution dated March 6, 2017</u>:

"**ACCORDINGLY**, premises considered, petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration (Re: Decision dated 22 December 2016) are hereby **DENIED** for lack of merit.

SO ORDERED."

Specifically, in **<u>CTA EB No. 1616</u>**, the CIR prays that the above-stated Decision and Resolution be reversed and set aside, and a new one be entered denying in its entirety the original *Petition for Review* for utter lack of merit; while in **<u>CTA EB No. 1621</u>**, TPC prays that a judgment be issued declaring it not liable for the deficiency expanded withholding tax and fringe benefits tax for taxable year 2005, as well as the corresponding interests and compromise penalties, and that the Formal Letter of Demand and Assessment Notices, dated November 12, 2009, and the Final Decision on Disputed Assessment, dated March 26, 2012 be cancelled and set aside.

THE FACTS

TPC is a domestic corporation registered with the Securities and Exchange Commission, with principal office address at the Penthouse, Philplans, Corporate Center 1012 Triangle Drive, North Bonifacio, Bonifacio Global City, 1201 Taguig City.

On the other hand, the CIR is duly appointed as such, empowered under the National Internal Revenue Code (NIRC) of 1997, as amended, to authorize the examination of any taxpayer and the assessment of the correct amount of taxes; as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Pursuant to *Letter of Authority* (LOA) No. 2001-00040857[5] dated July 4, 2006, and received by TPC on July 11, 2006, authorizing the examination of the books of accounts and other accounting records for all internal revenue taxes, the revenue officers conducted a tax investigation on TPC for taxable year 2005.

The CIR issued the *Preliminary Assessment Notice* ("PAN") with *Details of Discrepancy* dated May 19, 2009, for alleged deficiency expanded withholding tax (EWT), fringe benefits tax (FBT) and final withholding tax (FWT). TPC replied to the PAN via the letter dated June 30, 2009, opposing all the assessments in the PAN.

The CIR issued the *Final Letter of Demand* (FLD) and *Final Assessment Notice* (FAN) on November 12, 2009, with findings of alleged deficiency EWT and FBT. After receipt thereof by TPC on November 13, 2009, it submitted the *Protest* dated December 11, 2009 which was filed with the BIR on even date.

On March 26, 2012, the CIR issued the *Final Decision on Disputed Assessment* (FDDA) assessing TPC for alleged deficiency EWT and FBT amounting to ₱104,708,380.71, inclusive of interest and penalties. The FDDA was received by TPC on March 28, 2012.

TPC filed a *Petition for Review* with the Court in Division on April 27, 2012, which is within the thirty (30)-day period to appeal, reckoned from the date of receipt of the FDDA. The case was docketed as CTA Case No. 8479.

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[5] Erroneously referred to the Assailed Decision as LOA No. 2001-90040857, EB Docket (CTA EB No. 1616), p. 19; EB Docket (CTA EB No. 1621), pp. 58; as LOA No. 2001-9004085712 on the Petition for Review (CTA EB No. 1616), p.9; as LOA No. 00045857 and as LOA No. 000405857 on the Petition for Review (CTA EB No. 1621), p. 11 and 30, respectively.

In the said *Petition*, TPC argues that the assessments were issued beyond the prescriptive period; that the four (4) *Waivers of the Defense of Prescription Under the Statute of Limitations of the Tax Code* executed by TPC are defective and not valid; and that it is not liable for deficiency EWT and FBT. The FDDA contained the following assessments:

Tax Type	Basic	Interest	Compromise Penalty	TOTAL
EWT	₱ 45,857,766.13	₱ 56,939,012.63	₱ 50,000.00	₱ 102,846,778.76
FBT	821,540.84	1,020,061.11	20,000.00	1,861,601.95
TPC	**₱ 46,679,306.97**	**₱ 57,959,073.74**	**₱ 70,000.00**	**₱ 104,708,380.71**

Upon notice, and with extension granted, the CIR filed an *Answer* on June 29, 2012, and an *Amended Answer* on August 17, 2012, which was admitted in the Resolution dated September 24, 2012. The CIR, among others, argues that the waivers were valid and binding; and even if said waivers are defective, TPC is estopped from assailing the subject waivers; that the assessments were timely issued within the prescriptive periods, as stated in the waivers; that the assessments were issued in accordance with law, rules and jurisprudence; and that as withholding agent, TPC has the legal duty to collect the tax for the Government.

The CIR and TPC filed their *Pre-Trial Briefs* on July 25, 2012 and July 30, 2012, respectively. The *Joint Stipulation of Facts and Issues* (JSFI) was filed on October 22, 2012, and approved in the Pre-Trial Order dated November 7, 2012.

CTA Case No. 8479 proceeded to trial. TPC presented two witnesses, namely, (1) Dennis Odra (Mr. Odra), its Tax Manager, and (2) Enrico T. Pizarro, the Independent Certified Public Accountant (ICPA).

On February 18, 2014, TPC filed its *Formal Offer of Evidence*, formally offering its evidence, which were admitted on April 11, 2014, except for Exhibit "BB" for failure to identify the same. TPC also submitted a *Supplemental Formal Offer of Evidence* for the purpose of remarking its Amended Articles of Incorporation as Exhibit "RRR", which was admitted by the Court in Division in the Resolution dated November 10, 2014.

The CIR presented his sole witness, Revenue Officer (RO) Rosario Arriola.

On June 15, 2015, the CIR formally offered his evidence which were admitted on August 13, 2015.

Pursuant to the directive of the Court in Division, the CIR and TPC filed their *Memorandum* on December 21, 2015 and December 28, 2015, respectively. In the Resolution dated January 14, 2016, CTA Case No. 8479 was submitted for decision by the Court in Division.

In the assailed Decision,[6] TPC's *Petition for Review* was partially granted. The Court in Division upheld the assessment against TPC for taxable year 2005 covering deficiency EWT and FBT, but in the reduced amount of ₱16,077,645.16, inclusive of the 25% surcharge. TPC was likewise ordered to pay deficiency and delinquency interests.

TPC filed its *Motion for Reconsideration*,[7] and the CIR filed its *Motion for Partial Reconsideration (Re: Decision dated 22 December 2016)*,[8] both on January 23, 2017.

The CIR filed its *Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 23 January 2017*) on February 17, 2017,[9] while TPC filed its *Comment (to Respondent's Motion for Partial Reconsideration)* on February 23, 2017.[10]

In the assailed Resolution,[11] the Court in Division denied both TPC's *Motion for Reconsideration* and the CIR's *Motion for Partial Reconsideration (Re: Decision dated 22 December 2016),* for lack of merit.

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[6] EB Docket (CTA EB No. 1616), pp. 18 to 42; EB Docket (CTA EB No. 1621), pp. 57 to 81; and Division Docket – Vol. 3 (CTA Case No. 8479), pp. 1368 to 1392.
[7] Division Docket – Vol. 3 (CTA Case No. 8479), pp. 1394 to 1464.
[8] Division Docket – Vol. 3 (CTA Case No. 8479), pp. 1466 to 1473.
[9] Division Docket – Vol. 3 (CTA Case No. 8479), pp. 1488 to 1494.
[10] Division Docket – Vol. 3 (CTA Case No. 8479), pp. 1498 to 1508.
[11] EB Docket (CTA EB No. 1616), pp. 43 to 48; EB Docket (CTA EB No. 1621), pp. 50 to 55; and Division Docket – Vol. 3 (CTA Case No. 8479), pp. 1510 to 1515.

Thus, on March 22, 2017, the CIR filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*,[12] praying for an extension of fifteen (15) days from March 24, 2017, or until April 8, 2017 to file his *Petition for Review*. The Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from March 24, 2017 or until April 8, 2017, within which to file his *Petition for Review*.[13]

Likewise, TPC filed a *Motion for Extension of Time to File Petition for Review* on March 27, 2017,[14] praying for an additional fifteen (15) days from March 28, 2017, or until April 12, 2017 to file its *Petition for Review*. The Court *En Banc* also granted TPC a final and non-extendible period of fifteen (15) days or until April 12, 2017, within which to file its *Petition for Review*.[15]

On April 4, 2017, the CIR filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1616;[16] while on April 11, 2017, TPC filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1621.[17]

Considering that the instant cases are appeals from the Decision dated December 22, 2016 and Resolution dated March 6, 2017 rendered by the Court in Division in CTA Case No. 8479, CTA EB No. 1621 was consolidated with CTA EB No. 1616 on April 21, 2017.[18]

In the Resolution dated May 15, 2017,[19] the Court *En Banc* ordered TPC and the CIR to file their respective *Comments* to the *Petition for Review* of the other.

On June 19, 2017, TPC filed its *Comment (to Petition for Review filed by Commissioner of Internal Revenue)*.[20] The CIR, however, failed to file his *Comment*.[21]

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[12] EB Docket (CTA EB No. 1616), pp. 1 to 4.
[13] Minute Resolution dated March 24, 2017, EB Docket (CTA EB No. 1616), p. 6.
[14] EB Docket (CTA EB No. 1621), pp. 1 to 4.
[15] Minute Resolution dated March 29, 2017, EB Docket (CTA EB No. 1621), p. 7.
[16] EB Docket (CTA EB No. 1616), pp. 7 to 16.
[17] EB Docket (CTA EB No. 1621), pp. 8 to 49.
[18] Minute Resolution dated April 21, 2017, EB Docket (CTA EB No. 1616), p. 52.
[19] EB Docket (CTA EB No. 1616), pp. 55 to 56.
[20] EB Docket (CTA EB No. 1616), pp. 63 to 71.
[21] Records Verification dated June 29, 2017 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 1616), p. 73.

In the Resolution dated July 24, 2017,[22] the Court directed the parties to file their respective *Consolidated Memorandum*.

On October 9, 2017, TPC filed its *Memorandum;*[23] while the CIR filed his *Memorandum* on October 10, 2017.[24]

Thereafter, in the Resolution dated November 20, 2017,[25] the instant consolidated cases were deemed submitted for decision.

Meanwhile, on May 2, 2018, TPC filed a *Motion to Admit Supplemental Memorandum*[26] with attached *Supplemental Memorandum*.[27]

In the Resolution dated May 21, 2018,[28] the Court granted TPC's *Motion to Admit* and admitted the *Supplemental Memorandum*. The Court *En Banc* likewise directed the CIR to file his *Reply Memorandum* should he find the necessity to do so. The CIR, however, failed to file the said *Reply Memorandum*.[29]

Hence, this Decision.

THE ISSUES

In **<u>CTA EB No. 1616</u>**, the CIR raises the following issue, to wit:

> "WHETHER THE HONORABLE COURT'S THIRD DIVISION ERRED IN RULING THAT RESPONDENT'S PURCHASES WERE VALID IMPORTATIONS HENCE, SHOULD NOT BE SUBJECT TO EXPANDED WITHHOLDING TAX (EWT)."[30]

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[22] EB Docket (CTA EB No. 1616), pp. 75 to 76.
[23] EB Docket (CTA EB No. 1616), pp. 90 to 127.
[24] EB Docket (CTA EB No. 1616), pp. 129 to 135.
[25] EB Docket (CTA EB No. 1616), pp. 138 to 139.
[26] EB Docket (CTA EB No. 1616), pp. 140 to 143.
[27] EB Docket (CTA EB No. 1616), pp. 145 to 149.
[28] EB Docket (CTA EB No. 1616), pp. 152 to 153.
[29] Per Records Verification dated July 20, 2018 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 1616), p. 154.
[30] EB Docket (CTA EB No. 1616), pp. 11 and 132.

On the other hand, in **CTA EB No. 1621**, TPC raises the following issues, to wit:

> "A. The assessment for alleged [TPC]'s deficiency expanded withholding tax and fringe benefit tax liabilities for taxable year 2005 had already prescribed.
>
> B. The assessment is void for violation of [TPC]'s right to due process.
>
> C. The assessment lacks factual and legal bases.
>
> D. [TPC] is not liable for deficiency and delinquency interest."[31]

The CIR's arguments:

The CIR argues that TPC failed to prove that its purchases were valid importations, hence, the same should be subject to deficiency assessment for EWT.

The CIR likewise asserts that the assessment issued against TPC is valid and lawful. According to the CIR, all presumptions are in favor of the correctness of tax assessments.

TPC's arguments:

TPC argues that the assessment for deficiency EWT and FBT for taxable year 2005 had already prescribed. According to TPC, considering that the subject assessments were issued beyond the three-year prescriptive period, the same should be considered null and void and thus, unenforceable.

It is TPC's contention that the waivers executed in this case are defective as the requisites for the validity of the waivers under Section 222(b) of the Tax Code and Revenue Memorandum Order (RMO) No. 20-90 were not complied with.

As for the application of the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications*

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[31] EB Docket (CTA EB No. 1621), p. 16; (CTA EB No. 1616), pp. 98 to 99.

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Phils., Inc.) (hereinafter referred to as "*Next Mobile* case")[32], TPC maintains that the said case is meant to apply only to certain set of facts obtaining therein; that it is the very factual milieu of the said case that necessitated the application of the *in pari delicto* doctrine. Allegedly, absent such circumstances, the Supreme Court would not have applied the doctrine, and it would have declared the waivers therein as invalid. Further, it avers that the *in pari delicto* rule applies only to illegal contracts and not to void or inexistent contracts.

TPC claims that the case applicable in the instant case is *Commissioner of Internal Revenue vs. Philippine Daily Inquirer*[33] (hereinafter referred to as "*PDI* case"), where the Supreme Court sustained the findings of the Court of Tax Appeals that the waivers executed were void. According to TPC, the *PDI* case is on all fours with the present case since the defects of the waivers in this case are likewise attributable only to the CIR.

TPC also asserts that the assessment is void for violation of its right to due process. It is alleged by TPC that the CIR issued LOA No. 00040857 dated July 4, 2006, authorizing the revenue officers to examine its books for taxable period 2005. The said LOA No. 00040857 made reference to LOA No. 00081620 which allegedly was not received by TPC.

TPC maintains that since LOAs contain the basis for the authority of revenue officers in conducting examinations or assessments, it is necessary that the taxpayers affected thereby be notified.

Further, in its *Supplemental Memorandum*, TPC contends that a LOA is valid only for 120 days and that the revenue officer named therein must conduct audit and submit a report within the120-day validity period. The failure to submit the said report will allegedly render the assessment void, absent any issuance of a revalidated LOA. In the instant case, TPC claims that the examiner failed to submit a report within the 120-day validity period and that no evidence was shown that the LOA was revalidated. In view thereof, it is TPC's position that the assessment is a nullity.

TPC further argues that it is not liable for the alleged deficiency EWT and FBT since the FLD issued lacked factual and legal bases.

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[32] G.R. No. 212825, December 7, 2015.
[33] G.R. No. 213943, March 22, 2017.

It is alleged that a reference to the FLD and the *Details of Discrepancy* would show that it merely stated the amounts of taxes without reference to the actual facts which led to the issuance of the assessment. Moreover, there is allegedly no mention of the specific provisions of law which are the basis for the imposition of the subject taxes.

As against the CIR's claim that TPC failed to prove that its purchases were valid importations, TPC counter-argues that it relies heavily on importations and substantial amounts of its purchases are importations of gasoline, diesel, lubricants, kerosene, liquefied petroleum gas (LPG) and special fluids from its suppliers. These importations are allegedly not subject to withholding taxes. Further, TPC claims that as testified by its witness, Dennis Odra, these importations are neither domestic nor local purchases.

As to the imposition of deficiency and delinquency interests, TPC submits that deficiency interest should only be imposed upon deficiency income taxes, donor's taxes, and estate taxes and not on the deficiency EWT and FBT. Moreover, TPC claims that the deficiency interest should not be simultaneously imposed with delinquency interest.

THE COURT *EN BANC'S* RULING

Before going to the merits of the case, the Court shall first address the issues on prescription and the due process requirement.

The waivers validly extended the prescriptive period.

TPC claims that the waivers executed in this case are defective as the requisites for the validity of the waivers under Section 222(b) of the Tax Code and RMO No. 20-90 were not complied with. Consequently, it submits that the period to assess the subject deficiency EWT and FBT for taxable year 2005 had already prescribed.

On the other hand, the Court in Division, applying the *Next Mobile* case, ruled that both parties are *in pari delicto,* hence, the subject waivers validly extended the period of prescription.

We sustain the findings of the Court in Division.

Sections 203 and 222 of the NIRC of 1997 state the periods of limitation upon the assessment and collection of taxes, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* — **<u>Except as provided in Section 222</u>, 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." *(Emphasis and underscoring supplied)*
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> "**SEC. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
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> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (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.
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> xxx xxx xxx." *(Emphasis supplied)*

Under Section 203 of the NIRC of 1997, the government is mandated to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.

An exception to this three (3)-year prescriptive period is when the CIR and the taxpayer timely agree in writing to extend the period to assess, as provided under Section 222 (b) of the NIRC of 1997. Accordingly, the period to assess and collect taxes may be extended upon a valid written agreement between the CIR and the taxpayer prior to the expiration of the three (3)-year prescriptive period. The agreement is commonly known as the *"waiver of the statute of limitations"*, which is defined as *"an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain."*[34]

In a plethora of cases,[35] the Supreme Court have consistently ruled that a waiver must strictly conform with the requirements provided by RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01. The Court emphasized that the failure to comply therewith results in the nullity of the waiver and consequently, shall not extend the period to assess the tax.

Nevertheless, in the *Next Mobile* case the Supreme Court sustained the validity of the waiver despite its failure to strictly comply with the requirements under RMO No. 20-90 and RDAO 05-01, to wit:

> "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.
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> To be sure, both parties in this case are at fault.

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[34] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[35] *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 5, 2010, *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

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Here, respondent, through Sarmiento, executed five Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO 01-05 which requires the presentation of a written and notarized authority to the BIR.

Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized.

Vis-a-vis the five Waivers it received from respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.

Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

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 BIR 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.

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

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, <u>We shall treat this case as an exception to this rule</u> and find the Waivers valid for the reasons discussed below.

First, the parties in this are *in pari delicto* or 'in equal fault.' *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

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." (*Emphasis and underscoring supplied.)*

Based on the foregoing jurisprudential pronouncements, while the requirements under RMO No. 20-90 and RDAO No. 05-01 must be strictly complied with, a defective waiver may nevertheless validly extend the period of prescription when the parties are *in pari delicto*.

We find no reason to deviate from the foregoing ruling of the Supreme Court. Contrary to TPC's arguments, We find that the ruling in the *Next Mobile* case squarely applies to the present case. We note that the defects of the waivers present in the *Next Mobile* case are the same with the deficiencies in the waivers noted in the instant case.

In this case, records show that four (4) waivers were executed by TPC, extending the prescriptive periods for assessment of withholding taxes for the year 2005 to June 30, 2008,[36] December 31, 2008,[37] June 30, 2009,[38] and December 31, 2009.[39]

As found by the Court in Division, TPC failed to present the notarized authority of the person who signed the waiver on its behalf. Such is a clear violation of RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO No. 01-05 which requires the presentation of a written and notarized authority to the BIR. Notably, finding that no such authority was submitted, the BIR could have simply required the submission of the same, but it did not.

Similarly, it is undisputed that the CIR violated its own rules when it failed to indicate in the subject waivers the date of its acceptance. Finding the absence of such date, TPC could have simply called the attention of the BIR, for the latter to state the same, but apparently, TPC did not do so as well.

Taking the foregoing into consideration, it is evident that both TPC and CIR are at fault.

Accordingly, the *Next mobile* case finds application in this case considering that the parties are *in pari delicto* and have not come to this Court with clean hands.

Likewise, TPC is estopped from questioning the validity of the subject waivers. It bears emphasis that TPC voluntarily executed the waivers one after another without raising any objection thereto during

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[36] Exhibit "C", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 868 to 869.
[37] Exhibit "D", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 870 to 871.
[38] Exhibit "E", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 872 to 873.
[39] Exhibit "F", Division Docket – Vol. 2 (CTA Case No. 8479), p. 874.

the audit investigation. It is only after the issuance of the FLD that TPC belatedly impugned their validity.

As regards TPC's contention that the *PDI* case is applicable, the same is bereft of merit. In the said case, the defects in the waivers were solely attributed to the CIR. Unlike in the instant case, no findings were made that the taxpayer in the *PDI* case was at fault in the execution of the waivers. As such the doctrine of *in pari delicto* finds no application therein.

Furthermore, it must be noted that in the *PDI* case, what was applied is the general rule 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. What We have here is the application of the exception to such general rule as enunciated in the *Next Mobile* case.

Consequently, and in light of the Decision of the Supreme Court in the *Next Mobile* case, the Court *En Banc* hereby finds that the subject waivers had validly extended the right of the government to assess TPC of its deficiency withholding tax liabilities for taxable year 2005.

The Court in Division correctly upheld the validity of the LOA.

TPC claims that it was deprived of its right to due process on the ground that LOA No. 00040857 dated July 4, 2006[40] is void.

TPC claims that the said LOA No. 00040857 made reference to LOA No. 00081620 which allegedly was not received by TPC. Further, in its *Supplemental Memorandum*, TPC contends that an LOA is valid only for 120 days and that a report must be submitted within the said 120-day period. According to TPC, in this case, the revenue officers failed to submit the requisite report in connection with the issuance of LOA No. 00040857 within the prescribed 120-day period. As such, absence any revalidated LOA, the assessment is likewise void.

We find the foregoing contentions bereft of merit.

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[40] Exhibit "R-1", BIR Records (Folder 1), p.3.

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As to TPC's argument that it was deprived of due process on the ground that it did not receive LOA No. 00081620, We agree with the Court in Division that the fact that the said LOA No. 00081620 was not received by TPC is irrelevant considering that TPC had already admitted the receipt of LOA No. 00040857 which duly authorized the revenue officers named therein to conduct the audit investigation for taxable year 2005.

There is likewise no merit in TPC's contention that the failure of the revenue officers who conducted the investigation to submit a report within the 120-day period would render the assessment void.

RMO No. 33-84 lays down the guidelines in the submission of the report within the 120-day period, to wit:

> "A final report of investigation of a tax case shall be accomplished and submitted by the examiner to his supervisor within 120 days from the date of issuance of the letter of authority. **In case of failure to do so, the Division Chief or Revenue District Officer, respectively, shall require the examiner to show cause why sanctions should not be imposed against him for failure to render report of a tax case within the period required**." (*Emphasis supplied*)

Clearly, the foregoing RMO did not categorically state that the failure to accomplish and submit a final report on the investigation within the 120-day prescribed period from the date of issuance of the letter of authority shall automatically lead to its invalidation.

Instead, it only prescribed for a possible administrative sanction on the erring examiner.

It bears noting that under the pertinent rules provided in Revenue Audit Memorandum Order No. 2-95[41] and RMO No. 43-90[42], which specify the procedures and policy guidelines in the issuance of an LOA, there is likewise no indication that the failure to submit a final report will result to the invalidation of the LOA and the assessment.

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[41] Updated Handbook on Audit Procedures and Techniques dated October 18, 1995.

[42] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated September 20, 1990.

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Accordingly, We find no basis to nullify the LOA solely on the ground that the revenue officers failed to submit the final report on the investigation within the 120-day period.

The FLD sufficiently informed TPC of the facts and law on which the assessment was based.

As to the TPC's contention that the FLD failed to state the facts and the law upon which the assessment was based, the Court finds the same to be without merit.

Section 228 of the NIRC of 1997, as amended provides as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void**.
>
> xxx xxx xxx." (*Emphasis supplied).*

While the foregoing provision requires that the taxpayers should be informed of the legal and factual bases of the assessment, the assessment notices, however, need not be a full narration of the facts and laws on which the assessment is based. Further, while the law mandates that the notice must be in writing, it does not categorically state that the assessment itself must contain such information. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[43]

In this case, an evaluation of the FLD and FAN with attached

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[43] *Calma, et al. vs. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999.

Details of Discrepancy (Annex A)[44] shows that the foregoing documents contained the facts and laws upon which the deficiency tax assessments were based. A perusal thereof shows that TPC was properly apprised of the factual and legal bases of the subject deficiency tax assessments.

Moreover, it bears noting that the issue of the alleged failure of the FLD to state the factual and legal basis was only raised with this Court for the first time. The said issue was never raised by TPC in its protest as well as in any of the pleadings filed with the Court in Division. In fact, a perusal of its protest dated December 11, 2009[45] and its *Petition for Review* filed on April 27, 2012[46] with the Court in Division shows that TPC had specifically oppose the factual and legal basis of the deficiency tax assessments. The fact that TPC was able to intelligently protest the assessment implies that it had substantial understanding of the factual and legal bases of the assessments. Thus, it is clear from the assessment and the subsequent acts of TPC that it was sufficiently informed of the factual and legal basis of the assessment.

We now look into the merits of the case.

TPC is liable for deficiency EWT and FBT for taxable year 2005.

<u>TPC failed to substantiate its alleged importations and to show proof that the pertinent payments made were already subjected to EWT.</u>

In the assailed Decision, the Court in Division ruled that TPC is liable for deficiency EWT at 1% in the reduced amount of ₱11,589,526.30. According to the Court in Division, TPC was only able to show proof of importations (*i.e.*, IEIRDs and foreign invoices) amounting to ₱33,817,190.84. As such only the assessment on deficiency EWT for the said importations was canceled.

As to the other items in the assessment for deficiency EWT at 1%, the Court in Division finds that TPC was not able to provide sufficient proof that the said items pertain to importations or that the

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[44] Exhibit "I", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 895 to 909.
[45] Exhibit "J", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 910 to 919
[46] *Petition for Review*, Division Docket – Vol. 1 (CTA Case No. 8479), pp. 9 to 36.

same were subjected to other withholding tax rates. Consequently, the Court in Division finds TPC liable for deficiency EWT at 1% in the amount of ₱11,589,526.30.

TPC argues that it relies heavily on importations and that substantial amounts of its purchases are importations of gasoline, diesel, lubricants, kerosene, LPG and special fluids from its suppliers. According to TPC, these importations are not subject to withholding taxes. Further, TPC claims that as testified by its witness, Dennis Odra, these importations are neither domestic nor local purchases.

On the other hand, the CIR argues that TPC failed to prove that its purchases were valid importations, hence, the same should be subject to deficiency assessment for EWT.

We find no cogent reason to deviate from the findings of the Court in Division.

A perusal of the records shows that the TPC was only able to submit sufficient proof of importations (*i.e.*, IEIRDs and foreign sales invoice) for its purchases of unleaded gasoline (ULG),[47] ADO,[48] LPG Bulk[49] and SPFLUIDS.[50] Out of these importations, only the purchases for ULG, LPG Bulk and SPFLUIDS are included in the assessment for deficiency EWT at 1%[51]. Accordingly, We agree with the Court in Division that the assessment for deficiency EWT at 1% for these importations amounting to ₱28,834,041.12, ₱4,920,926.81, and ₱62,222.91, respectively, or a total of ₱33,817,190.84 should be cancelled.

As to the other items of the assessment for deficiency EWT at 1%, TPC failed to rebut the Court in Division's findings that no sufficient evidence was presented to corroborate its claim that these items were already subjected to EWT. Hence, this Court finds no

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[47] Exhibits "FFF-1.1" to "FFF-1.16", ICPA Report, Division Docket – Vol. 2 (CTA Case No. 8479), pp. 498 to 548.

[48] Exhibits "FFF-2.1" to "FFF-2.35", ICPA Report, Division Docket – Vol. 2 (CTA Case No. 8479), pp. 550 to 656.

[49] Exhibits "FFF-3.1" to "FFF-3.9", ICPA Report, Division Docket – Vol. 2 (CTA Case No. 8479), pp. 658 to 697; Exhibits "GGG-1.1" to "GGG 1.3", ICPA Report, Division Docket – Vol. 2 (CTA Case No. 8479), pp. 723 to 737.

[50] Exhibit "FFF-4.1" to "FFF-4.3", ICPA Report, Division Docket – Vol. 2 (CTA Case No. 8479), pp. 699 to 707; Exhibit "GGG2.1" to "GGG 2.6", ICPA Report, Division Docket – Vol. 2 (CTA Case No. 8479), pp. 709 to 721.

[51] Schedule attached to the FLD, Division Docket – Vol. 2 (CTA Case No. 8479), p. 901.

basis to disturb the ruling of the Court in Division.

TPC failed to present sufficient evidence to overcome the presumption of correctness of tax assessments.

As regards the assessment for deficiency EWT at 2% and FBT, the Court in Division ruled that based on the examination of the records of the case and as verified by the ICPA in his report, TPC failed to present proof that the assessment is excessive and erroneous. According to the Court in Division, in the absence of proof, the presumption of correctness of the assessments would prevail. Accordingly it ruled that TPC is liable for basic deficiency EWT at 2% and basic FBT in the amount of ₱451,048.99 and ₱821,540.84, respectively.

We sustain the findings of the Court in Division.

An examination of TPC's *Petition* in CTA EB No. 1621 as well as the other pleadings filed with this Court *En Banc* show that TPC did not refute the findings of the ICPA and the Court in Division that no sufficient evidence was presented to dispute assessment for deficiency EWT at 2% and deficiency FBT. TPC made no attempt to point out any error in the said findings of the ICPA and the Court in Division.

This Court echoes the ruling of the Supreme Court 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."[52]

As such, We shall sustain the conclusion of the Court in Division that TPC is liable for deficiency EWT at 2% and Deficiency FBT.

Modification on the imposition of deficiency and delinquency interests.

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[52] *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.

Prior to the promulgation of this Decision, Republic Act (RA) No. 10963 or otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law), took effect on January 1, 2018, amending pertinent provisions of the NIRC of 1997, among which is Section 249.[53] The amended provision of Section 249 reads as follows:

> "**SEC. 249**. *Interest.* –
>
> (A) *In General*. - There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid**: *Provided*, **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously**.
>
> (B) *Deficiency Interest.* -Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof,

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[53] Section 249 of the NIRC of 1997 reads:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> xxx xxx xxx
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

> or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> (C) *Delinquency Interest.* xxx." *(Emphasis supplied)*

Based on the foregoing, the following amendments are introduced by the TRAIN Law, to wit:

1. The interest rate is reduced to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas."

   Currently, the legal interest rate is 6%,[54] hence the interest rate to be applied on any unpaid amount of tax shall be 12%, which is lower than the twenty (20%) interest imposed under the NIRC of 1997.

2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of interest penalties under the NIRC of 1997, has been effectively eliminated.

3. The period for the application of deficiency interest is modified to run from the date prescribed for its payment until the full payment thereof, **or upon issuance of a notice and demand by the CIR, whichever comes earlier**. Hence, under the TRAIN law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance o**f a notice and demand by the CIR.**

   It bears noting that under the NIRC of 1997, the deficiency interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof and is not interrupted by the issuance of a notice or demand from the CIR.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[55]

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[54] BSP MB Circular No. 799, Series 2013 which took effect on July 1, 2013.
[55] *BPI Leasing Corporation vs. Court of Appeals, et al.,* G.R. No. 127624, November 18, 2003.

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There being no clear legislative intent to retroactively apply the TRAIN law, the same should only be applied prospectively, *i.e.*, beginning January 1, 2018.

Furthermore, it bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being *construed strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[56]

Considering the foregoing principles, the effects of the amendments under the TRAIN Law, particularly the imposition of interests, shall be applied to this case.

Thus, as of January 1, 2018, the interests to be imposed must already be 12%, and there must no longer be a simultaneous imposition of deficiency and delinquency interests.

TPC is liable for deficiency and delinquency interests, prior to the TRAIN Law.

Lastly, TPC argues that deficiency interest should only be imposed upon deficiency income taxes, donor's taxes, and estate taxes and not on the deficiency EWT and FBT. Moreover, TPC claims that the deficiency interest should not be simultaneously imposed with delinquency interest.

We disagree.

Prior to the amendments introduced by the TRAIN Law, the legislative intent was to simultaneously impose the deficiency interest and the delinquency interest. It is a basic precept in statutory construction that a change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had.[57]

A comparison of the old and new Section 249 is thus called for, to wit:

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[56] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[57] *Dreamwork Construction, Inc. vs. Janiola, et al.*, G.R. No. 184861, June 30, 2009.

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Old Section 249(A) [NIRC of 1997]	**New Section 249(A) [TRAIN Law]**
SEC. 249. *Interest.* – (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid. (B) *Deficiency Interest.* – xxx xxx xxx (C) *Delinquency Interest.* – xxx xxx xxx	SEC. 249. *Interest.* – (A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously**. (B) *Deficiency Interest.* – xxx xxx xxx (C) *Delinquency Interest.* – xxx xxx xxx *(Emphasis supplied)*

It is noteworthy that the TRAIN Law did not only change the interest rate, but also introduced a new phrase which states: "(t)*hat in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously."* In view of this change in phraseology, it is not hard to discern that the original intention of the legislature is to impose the deficiency and delinquency interests simultaneously. To be clear, prior to such amendment made by the TRAIN Law, the simultaneous imposition of the deficiency and delinquency interests is mandated. Thereafter, no simultaneous imposition may already be made.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by the CIR is **DENIED** for lack of merit, while the *Petition for Review* filed by TPC is **PARTIALLY GRANTED**. The Decision dated December 22, 2016 and the Resolution dated March 6, 2017, both rendered by the Court in Division in CTA Case No. 8479, are **AFFIRMED with MODIFICATION.**

Accordingly, TPC is **ORDERED TO PAY EIGHTY NINE MILLION THIRTEEN THOUSAND FOUR HUNDRED NINETY-NINE AND 58/100 PESOS (₱89,013,499.58)** representing deficiency EWT and FBT for taxable year 2005, inclusive of the twenty-five percent (25%) surcharge, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	EWT		FBT	TOTAL
	Supplier at 1%	*Contractor at 2%*		
Basic Tax Due	₱11,589,526.30	₱451,048.99	₱821,540.84	₱12,862,116.13
Add: 25% Surcharge	2,897,381.58	112,762.25	205,385.21	3,215,529.03
20% Deficiency Interest from January 16, 2006 to November 30, 2009[58]				
[₱11,589,526.30 x 20% x 1,415/365 days]	8,985,851.90			8,985,851.90
[₱451,048.99 x 20% x 1,415/365 days]		349,717.44		349,717.44
[₱821,540.84 x 20% x 1,415/365 days]			636,975.50	636,975.50
Total Amount Due, November 30, 2009	**₱23,472,759.77**	**₱913,528.67**	**₱1,663,901.55**	**₱26,050,190.00**
Add: 20% Deficiency Interest from December 1, 2009 to December 31, 2017				
[₱11,589,526.30 x 20% x 2,953/365 days]	18,752,806.12			18,752,806.12
[₱451,048.99 x 20% x 2,953/365 days]		729,834.34		729,834.34
[₱821,540.84 x 20% x 2,953/365 days]			1,329,320.60	1,329,320.60
20% Delinquency Interest from December 1, 2009 to December 31, 2017				
[₱23,472,759.77 x 20% x 2,953/365 days]	37,980,854.58			37,980,854.58
[₱913,528.67 x 20% x 2,953/365 days]		1,478,164.48		1,478,164.48
[₱1,663,901.55 x 20% x 2,953/365 days]			2,692,329.47	2,692,329.47
Total Amount Due, Dec. 31, 2017	**₱80,206,420.47**	**₱3,121,527.49**	**₱5,685,551.62**	**₱89,013,499.58**

In addition, TPC is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of

[58] Exhibit "I", Division Docket – Vol. 2 (CTA Case No. 8479), pp. 896 to 897.

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November 30, 2009 in the amount of **₱26,050,190.00**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice