REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

MEDICARD PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9049

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 12 2018
9:46 a.m.

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RESOLUTION

This resolves the issue of **Prescription** in the Petition for Review filed by Medicard Philippines, Inc. against the Commissioner of Internal Revenue. Petitioner prays that judgement be rendered declaring that respondent's right to assess petitioner for deficiency value-added tax (VAT) for taxable year (TY) 2007 is barred by prescription; declaring that petitioner is liable for deficiency VAT for TY 2007 in the aggregate amount of ₱582,823,612.22, inclusive of interest and compromise penalty; and ordering the withdrawal and cancellation of the subject Formal Assessment Notice (FAN)/Formal Letter of Demand(FLD).[1] This Resolution shall deal solely and exclusively with the issue of prescription.

On January 18, 2016, petitioner filed an Omnibus Motion[2], praying that a preliminary hearing be held to resolve the issue on prescription and to defer

[1] Docket, p. 665, Summary of the Case, Pre-Trial Order.
[2] *Id.*, pp. 174 to 178.

petitioner's submission of Judicial Affidavits. This was, however, initially denied by this Court in a Resolution[3] dated March 29, 2016.

On April 21, 2016, petitioner filed a Motion for Reconsideration [of Resolution dated March 29, 2016][4] which denied its motion for the early resolution of the issue of prescription.

After giving respondent an opportunity to file Comment and respondent having failed to file the same, this Court granted petitioner's motion in a Resolution dated July 13, 2016 and scheduled a preliminary hearing on the issue of prescription on August 15, 2016.[5]

To prove its material allegations in connection with the issue of prescription, petitioner presented its witness, Mr. Sherwin B. Salvador. Thereafter, petitioner formally offered its testimonial evidence as well as the following documentary evidence, which the Court admitted:[6]

Exhibits	Description
P-1	Final Decision on Disputed Assessment dated April 14, 2015
P-2	Letter of Authority No. 00006890 dated July 1, 2008
P-3	Waiver of the Statute of Limitations executed on August 13, 2010
P-4	Undated Waiver of the Statute of Limitations
P-5	Undated Waiver of the Statute of Limitations
P-6	Preliminary Assessment Notice dated November 11, 2011
P-7	Petitioner's Reply to the PAN dated and received by the BIR on December 5, 2011
P-8	Waiver of the Statute of Limitations executed on March 14, 2012
P-9	Waiver of the Statute of Limitations executed on January 11, 2013
P-10	Waiver of the Statute of Limitations executed on January 24, 2013
P-11	Final Assessment Notice with attached Assessment Notice dated November 6, 2013
P-12	Petitioner's Protest dated December 19, 2013 and received by the BIR on December 20, 2013

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3 *Id.*, pp. 240 to 241.
4 *Id.*, pp. 310 to 322, Motion for Reconsideration [Of Resolution dated March 29, 2016].
5 *Id.*, pp. 703 to 704, Resolution dated July 13, 2016.
6 *Id.*, pp. 878 to 879, Resolution dated October 10, 2016.

P-13	FDDA dated April 10, 2014 and received by the petitioner on April 11, 2014
P-14	Petitioner's letter-request for reconsideration dated and received by the BIR on May 9, 2014
P-15	Quarterly VAT Return for the 1st Quarter of 2007 filed on April 23, 2007
P-15-1	Quarterly VAT Return for the 2nd Quarter of 2007 filed on July 20, 2007
P-15-2	Quarterly VAT Return for the 3rd Quarter of 2007 filed on October 24, 2007
P-15-3	Quarterly VAT Return for the 4th Quarter of 2007 filed on January 24, 2008
P-15-3-a	Amended Quarterly VAT Return for the 4th Quarter of 2007 filed on February 13, 2008
P-16	Letter dated June 1, 2003 notifying and classifying petitioner as a large taxpayer
P-17	Securities and Exchange Commission Certificate of Registration of Medicard Philippines, Inc. dated December 29, 1986
P-18	SEC Certificate of Filing of Amended Articles of Incorporation dated January 17, 2002
P-19	BIR Certificate of Registration (BIR Form No. 2303) No. 8RC0000032113 dated June 21, 1994 issued by the BIR Large Taxpayers District Office
P-20	Bureau of Health Facilities and Services Clearance to Operate a Health Maintenance Organization No. IB-NCR-48-01-07 dated February 5, 2007
P-35	Judicial Affidavit of Sherwin B. Salvador
P-35-1	Signature of Sherwin B. Salvador
P-36	Supplemental Judicial Affidavit of Sherwin B. Salvador
P-36-1	Signature of Sherwin B. Salvador

On the other hand, in his presentation of evidence on the issue of prescription, respondent presented Revenue Officers (ROs) Lourdes B. Liwanag and Ricardo B. Calma to disprove petitioner's claim. Thereafter, respondent formally offered his testimonial and documentary evidence. The Court admitted the following documentary evidence:[7]

Exhibits	**Description**
R-1	Letter of Authority (LOA) No. LOA-2007-00006890 dated 01 July 2008
R-2	First Notice of Requirements dated 14 July 2008

[7] *Id.*, pp. 912 to 913, Resolution dated February 3, 2017.

R-3	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 13 August 2010
R-4	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 16 December 2010
R-5	Memorandum with attached Schedules of Computation dated 07 February 2011
R-6	Notice of Informal Conference with attached Details of Discrepancies dated 07 February 2011
R-7	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 23 May 2011
R-8	Memorandum recommending the issuance of the Preliminary Assessment Notice dated 10 November 2011
R-9	Preliminary Assessment Notice with attached Details of Discrepancies dated 11 November 2011
R-10	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 01 December 2011
R-11	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 14 March 2012
R-12	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 11 January 2013
R-13	Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code dated 24 January 2013
R-14	Memorandum of Assignment No. 122-REA-13-03-00228 dated 05 March 2013
R-15	Letter dated 14 March 2013
R-16	Memorandum recommending the issuance of the Formal Letter of Demand dated 06 November 2013
R-17	Formal Assessment Notice/Formal Letter of Demand dated 06 November 2013 with attached Details of Discrepancies
R-18	Audit Result/Assessment Notice (BIR Form 0401) No. VT-122-LA-6890-07-13-0105 dated 22 November 2013
R-19	Memorandum recommending the issuance of the Final Decision on Disputed Assessment dated 10 March 2014
R-20	Final Decision on Disputed Assessment with attached Details of Discrepancies dated 10 April 2014

R-21	Audit Result/Assessment Notice (BIR Form 0401) No. VT-122-LA6890-2007-14-0001-FDDA dated 10 April 2014
R-22	Memorandum addressed to the Commissioner of Internal Revenue, dated 15 July 2014 recommending the issuance of the Final Decision on Disputed Assessment
R-23	Final Decision on Disputed Assessment with attached Details of Discrepancies, issued by the Commissioner of Internal Revenue dated 14 April 2015
R-24	Entire BIR Records
R-25	Judicial Affidavit of Revenue Officer Lourdes B. Liwanag
R-25-a	Name and signature of Revenue Officer Lourdes B. Liwanag
R-26	Judicial Affidavit of Revenue Officer Ricardo B. Calma
R-26-a	Name and signature of Revenue Officer Ricardo B. Calma

After the Court considered the Memorandum for the Respondent[8] filed on March 10, 2017 and the Memorandum for Petitioner[9] filed on March 30, 2017, both focusing on the issue of prescription, the instant case was declared submitted for decision on April 4, 2017.[10]

In a Resolution dated May 22, 2018[11], the Resolution submitting the case for decision dated April 4, 2017 was recalled and set aside and the issue for prescription was submitted for resolution.

Petitioner's Arguments

Petitioner anchors its position on Section 203 of the NIRC of 1997, as amended, which grants the government a period of three years from the time the tax return is filed within which to assess deficiency taxes.

Petitioner allegedly filed the following Quarterly VAT Returns for TY 2007 in accordance with Section 114[12] of the NIRC of 1997, as amended:

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[8] *Id.*, pp. 914 to 938.
[9] *Id.*, pp. 951 to 976.
[10] *Id.*, p. 980, Resolution.
[11] Unpaginated in docket.
[12] SEC. 114. *Return and Payment of Value-added Tax.* -
(A) *In General.* - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

QUARTER	DATE FILED WITH BIR	LAST DAY TO FILE	LAST DAY TO ASSESS
First	April 23, 2007[13]	April 25, 2007	April 25, 2010
Second	July 20, 2007[14]	July 25, 2007	July 25, 2010
Third	October 24, 2007[15]	October 25, 2007	October 25, 2010
Fourth	January 24, 2008[16] February 13, 2008[17]	January 25, 2008	February 13, 2011

Petitioner avers that since respondent only issued the FAN for the alleged deficiency VAT covering TY 2007 on November 6, 2013, the said assessment is already barred by prescription. Petitioner further argues that even though the three-year prescriptive period within which to issue an assessment may be extended by agreement of the taxpayer and the Commissioner in accordance with Section 222(b) of the NIRC of 1997, as amended, petitioner asserts that the executed waivers are not valid for failure to comply with the requisites and formalities of a valid waiver. Hence, the waivers did not have the effect of extending the three-year prescriptive period to assess deficiency taxes.

Lastly, even assuming the waivers are valid, petitioner contends that the assessment for the first and second quarters of taxable year 2007 should still be considered prescribed as respondent only had until April 25, 2007 and July 25, 2010, respectively, within which to assess the alleged tax deficiency.

Respondent's Counter-Arguments

Respondent based its arguments on Section 222(a) of the NIRC of 1997 as amended. Respondent asserts that petitioner failed to consider the said provision of the Tax Code which specifically provides for the period of limitation of assessment. Respondent claims that based on the results of the audit investigation petitioner merely declared VAT payments representing 5.05% of its correct VAT liability which resulted in a substantial underdeclaration of around 94.95% of its supposed VAT liability. Thus, the discrepancy of 94.95% in petitioner's return manifests an evident substantial underdeclaration of its sales which proves falsity or fraudulence of VAT returns with intent to evade the payment of tax. Consequently, respondent's right to assess has not yet lapsed.

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[13] *Id.* at Note 1, pp. 807 to 808, Exhibit "P-15".
[14] *Id.*, pp. 810 to 811, Exhibit "P-15-1".
[15] *Id.*, pp. 813 to 814, Exhibit "P-15-2".
[16] *Id.*, pp. 816 to 817, Exhibit "P-15-3".
[17] *Id.*, pp. 819 to 820, Exhibit "P-15-3-a".

As to the issue of validity of the waivers executed by petitioner, respondent posits that examination of the waiver reveals substantial compliance with what has allegedly lacking as argued by petitioner. Lastly, respondent claims that the assessment against petitioner for deficiency VAT has bases both in fact and in law.

We rule in favor of petitioner.

The right of the government to assess petitioner for deficiency VAT for taxable year 2007 has prescribed

Section 203 of the NIRC of 1997, as amended, provides:

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

In the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*[18], the Supreme Court held that the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time, to wit:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely

[18] G.R. No. 167765, June 30, 2008.

> the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."

Thus, petitioner only had three years, counted from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment.

However, this rule is subject to the exceptions provided under Section 222 of the NIRC of 1997, as amended, which states:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (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." *(Emphasis supplied)*

It has been consistently held by this Court that allegations of falsity or fraud in the filing of tax returns must be proven to exist by clear and convincing evidence and cannot be justified by mere speculation. The fraud or falsity contemplated by law is actual and not constructive in nature. Therefore, it must be intentional with willful and deliberate act of deception and with the sole objective of avoiding tax. Apparently, the falsity or fraud is a question of fact and should never be presumed.

Respondent claims that the substantial underdeclaration of petitioner's sales demonstrates falsity or fraud in the VAT returns with intent to evade the payment of tax.

After a careful evaluation of the records, the Court finds no supporting evidence to prove that petitioner filed a false return because respondent did not present any witness or evidence to support such allegation of falsity. The so-called underdeclaration of sales is not sufficient to support such presumption.

On the contrary, a scrutiny of the FAN and the FDDAs dated April 10, 2014 and April 14, 2015, reveals that there is no indication that petitioner filed a false return. If indeed there were false returns that had been filed by petitioner, respondent should have imposed in the said FAN and FDDAs a penalty of 50% of the tax or of the deficiency tax in accordance with Section 248(B) of the NIRC of 1997, as amended, to wit:

> "SECTION 248. *Civil Penalties.* –
>
> xxx xxx xxx
>
> (B) In case of wilful neglect to file the return within the period prescribed by this Code or by rules and regulations, or **in case a false or fraudulent return is wilfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax**, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein." *(Emphasis supplied)*

This Court had the occasion to rule in the case of *Newspaper Paraphernalia, Inc. vs. Commissioner of Internal Revenue*[19] that a false return implies deviation from the truth, whether intentional or not, and due process dictates that the taxpayer must be informed of the facts and the law upon which the assessment is made. It was likewise held by this Court that since respondent neither presented any evidence to substantiate its claim that petitioner filed a false return nor imposed

[19] Resolution, CTA Case No. 8599, January 22, 2016.

the penalty of fifty percent of the tax or of the deficiency tax, the issue on false return was a mere afterthought, *viz*:

> "It is worthy to note that this is the first time respondent has raised the argument that petitioner filed a false return. A false return implies deviation from the truth, whether intentional or not. There was no mention of respondent's findings that petitioner filed a false return in her Answer, nor was it mentioned by her lone witness in her Judicial Affidavit. Moreover, it was never mentioned in the preliminary assessment notice or in the FAN, as well as in the details of discrepancy attached thereto. Due process dictates that the taxpayer must be informed of the facts and the law upon which the assessment is made. Furthermore, respondent did not present any evidence to substantiate its claim that petitioner filed a false return, neither did it impose the penalty of fifty percent (50%) of the tax or of the deficiency tax, pursuant to Section 248(B)5 of the 1997 National Internal Revenue Code ('NIRC'). These circumstances, taken together, can only lead the Court to conclude that the argument raised by respondent in her Motion for Reconsideration is a mere afterthought, and thus, deserves scant consideration."

Further, the Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. Javier, et al.*[20] that a taxpayer who files a false return is liable to pay a penalty of 50% of the tax due or of the deficiency tax, to wit:

> "Under the then Section 72 of the Tax Code (now Section 248 of the 1988 National Internal Revenue Code), a taxpayer who files a false return is liable to pay the fraud penalty of 50% of the tax due from him or of the deficiency tax in case payment has been made on the basis of the return filed before the discovery of the falsity or fraud."

Based on the foregoing, respondent failed to convince this Court that petitioner filed a false tax return; thus, the exception as to period of limitation to assess petitioner for deficiency tax is inapplicable to the instant case.

The Waivers are defective and thus, failed to extend the three-year prescriptive period under Section 203(b) of the NIRC of 1997, as amended

[20] G.R. No. 78953, July 31, 1991.

In accordance with Section 222(b) of the NIRC of 1997, as amended, the prescriptive periods may be suspended by the execution of a waiver of the statute of limitations. However, the very same section requires that the waiver must be executed before the expiration of the three-year period for assessing taxes.

Section 222(b) of the NIRC of 1997, as amended, authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the BIR agrees in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date.

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[21], the Supreme Court discussed in detail Section 222 (b) of the NIRC of 1997, as amended, which provides that the period to assess and collect taxes may only be extended upon a written agreement between the BIR Commissioner and the taxpayer executed before the expiration of the three-year period. Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase but not after ______ 19 ___, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. **In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
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> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

[21] G.R. No. 178087, May 5, 2010.

5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription** or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.**" *(Emphasis supplied)*

In the *Kudos* case, the waivers executed by Kudos were found ineffective to extend the period to assess or collect taxes because: (1) the accountant who executed the waivers had no notarized written board authority to sign the waivers on behalf of respondent corporation; (2) there was no date of acceptance indicated on the waivers; and (3) the fact of receipt by respondent of his file copy was not indicated in the original copies of the waivers.

In the instant case, the following are the waivers executed by the parties:

Requisites of a Valid Waiver	First Waiver[22]	Second Waiver[23]	Third Waiver[24]	Fourth Waiver[25]	Fifth Waiver[26]	Sixth Waiver[27]	Seventh Waiver[28]
Date of Execution	8/13/10	12/16/10	5/23/11	12/1/11	3/14/12	1/11/13	1/24/13
Period of Limitation	12/31/10	6/30/11	12/31/11	6/30/12	1/31/13	3/31/13	12/31/13
BIR Signatory	Zenaida G. Garcia – Asst. Com. – LTS	Zenaida G. Garcia – Asst. Com. – LTS	Zenaida G. Garcia – Asst. Com. – LTS	Alfredo V. Misajon – OIC – Asst. Com. – LTS	Alfredo V. Misajon – OIC – Asst. Com. – LTS	Alfredo V. Misajon – OIC – Asst. Com. – LTS	Alfredo V. Misajon – OIC – Asst. Com. – LTS
Taxpayer Signatory	Elizabeth B. Laqui – VP Controller						
Notarized Written Authority	No						
Date of Acceptance by BIR	*8/25/10*	12/20/10	6/1/11	12/2/11	3/22/12	1/15/13	1/25/13

22 *Id.* at Note 1, p. 760, Exhibit "P-3"; *id.* at Note 14, p. 680, "R-3".
23 *Id.* at Note 14, p. 681, Exhibit "R-4".
24 *Id.* at Note 1, p. 761, Exhibit "P-4", *id.* at Note 14, p. 778, "R-7".
25 *Id.*, p. 762, Exhibit "P-5"; *id.*, p. 905.
26 *Id.*, p. 771, Exhibit "P-8"; *id.*, p. 904, "R-11".
27 *Id.*, p. 772, Exhibit "P-9"; *id.*, p. 906, "R-12".
28 *Id.*, p. 773, Exhibit "P-10"; *id.*, p. 910, "R-13".

Date of Receipt by Medicard	8/31/10	*Not indicated*	6/6/11	12/8/11	4/3/12	1/17/13	1/29/13
Duly Notarized	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Based on the foregoing, the waivers are defective due to the following deficiencies:

The authority of petitioner's representative, Elizabeth B. Laqui – VP Controller, who signed the waivers is neither in writing nor duly notarized

Respondent failed to verify whether a notarized written authority was given to Ms. Elizabeth B. Laqui in signing the subject waivers on behalf of petitioner in violation of RDAO No. 05-01, which provides 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.

Respondent only alleged that based on the acknowledgment portion of the subject waiver, Ms. Laqui appeared before the notary public acknowledging that the execution of the waiver is her voluntary act and deed and that she is duly authorized to sign the same.

The procedure for the proper execution of the waiver as enumerated above is clear that in case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

The date of acceptance by the BIR of the first waiver was not indicated on petitioner's copy of the waiver

The date of acceptance is necessary to fix with certainty if the waiver was actually agreed upon before the expiration of the three-year prescriptive period.

The Court noted that there is a discrepancy between the exhibit presented by petitioner ("P-3") and respondent ("R-3") which supposedly pertain to the first waiver. In the former, the date of acceptance by the BIR was not indicated; while in the latter, August 25, 2010 was written as the acceptance date by the BIR.

Respondent failed to show that petitioner was notified of the acceptance by the BIR of the first waiver and that the agreement was perfected.

The fact of receipt by petitioner of the second waiver was not indicated in the original copy

Respondent also failed to prove the fact of receipt by petitioner of its file copy. The same must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR.

From the foregoing, it is evident that the first and second waivers were already defective. Consequently, it could not validly serve to extend the prescriptive period within which the CIR could assess petitioner. Respondent had, at most, until February 25, 2011 to assess petitioner for deficiency VAT for taxable year 2007. As the FAN was dated November 6, 2013, the assessment was issued clearly beyond the three-year prescriptive period.

Moreover, assuming the waivers executed by petitioner are in accordance with the requirements of a valid waiver, the assessment for the first and second quarters for taxable year 2007 should still be considered prescribed as respondent only had until April 25, 2010 and July 25, 2010, respectively, within which to assess the alleged deficiency. Here, the first waiver was only executed on August 13, 2010, which is beyond the last day to assess.

Quarter	Date Filed with BIR	Last Day to Assess
First	April 23, 2007	April 25, 2010
Second	July 20, 2007	July 25, 2010
Third	October 24, 2007	October 25, 2010
Fourth	January 24, 2008 February 13, 2008 (Amended VAT Return)	February 13, 2011

Estoppel does not apply

Respondent asserts that it can be deduced from the succeeding acts of petitioner of signing the last six waivers the clear intention of petitioner to give force and effect to all the waivers.

The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO No. 20-90 and RDAO No. 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by petitioner to its representative, and to indicate the date of acceptance and the receipt by respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[29]

Further, respondent allowed petitioner to submit, and it duly received, the subject defective Waivers when it was its duty to check compliance with RMO No. 20-90 and RDAO NO. 05-01 and follow the procedure dictated therein.

This Court is not unaware of the Supreme Court's pronouncement in *Commissioner of Internal Revenue v. Next Mobile, Inc.*[30] (Next Mobile case) in concluding that the parties are *in pari delicto* and remanding the case to the Court in Division, to wit:

> "Nonetheless, the Court En Banc finds that the aforequoted pronouncement of the Supreme Court in the *Next Mobile* case applicable in the present case.
>
> In the present case, both the petitioners and respondent are *in pari delicto.* **The respondent executed the subject waiver in consideration of the opportunity to gather and submit documents to substantiate and defend its case before the BIR at the investigation stage. At the same time, by virtue of the waiver, respondent was able to postpone the payment of subject taxes assessed against it.** And yet, after enjoying such benefits, respondent readily challenged the validity of the waiver when the effects thereof were not in its favor. Verily, respondent's act of impugning the subject waiver after benefitting therefrom and allowing the CIR to rely thereon is an act of bad faith.
>
> On the other hand, the CIR was also remiss in its duty of faithfully complying with its own issuances. She ought to ensure that all of the requirements for the execution of a valid waiver are carefully and completely followed. But as found by the Court in Division, the 1st waiver executed by the parties failed to strictly follow the prescribed format as required under RMO No. 20-90 by failing to specify the amount of tax due.

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[29] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[30] G.R. No. 212825, December 7, 2015.

> Considering that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer,[31] both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences." *(Emphasis supplied)*

The *Next Mobile* case's *"in pari delicto"* pronouncement is indubitably the exception and not the general rule. To make it the general rule would, first of all, result in the absurd consequence of invalidating the taxpayer remedy of being able to waive the statute of limitations, especially in the case where multiple waivers are executed by the parties.

Second, if this becomes the rule and not the exception, in a situation wherein the CIR and taxpayer execute multiple waivers, by virtue of the fact that neither of them did not point out defects in a prior waiver, they would already be *in pari delicto*, regardless of which party caused the first defect. By that yardstick, the CIR, or any of his authorized representatives, could be as remiss in their duties as they want, secure in the knowing that, regardless of how many faulty waivers are executed between the parties, because of the *in pari delicto* rule, the assessment would still push through. If this situation obtains, the principle that taxpayers are not estopped to raise the defense of prescription will be rendered sterile, on the one hand, and, on the other, waivers will be effectively invalidated because regardless of whether it has been the BIR that has caused the defect, the taxpayer bears the consequences of their lapses solely because they have asked for the waiver in the first place and benefited from the reasons for asking that waiver. That could not have been the intent of the remedy afforded to taxpayers by the law. Even the *Next Mobile case* itself says that its ruling was to be the exception due to the "peculiar circumstances" of the case.[32]

The *In Pari Delicto* rule is embodied in Article 1411 of Chapter 9 of the Civil Code under "Void and Inexistent Contracts", thus:

> **ART. 1411.** When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

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[31] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[32] *Id.* at Note 1, p. 10.

> This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

From the foregoing, for the *in pari delicto* rule to kick in, it is imperative that a) the nullity proceeds from the illegality of the cause or object of the contract; and b) the act constitutes a criminal offense; i.e. delict. A contract to waive the statute of limitations is not an illegal one because it is specifically allowed by law. Furthermore, in this particular case, the failure of respondent to verify whether or not petitioner submitted the authority of petitioner's representative via a written and notarized document is also not a criminal offense. At most, the liability of the neglectful officer is administrative. There is no room for the application of the *in pari delicto* rule.

In fact, in a recently decided case by the Supreme Court, *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[33] (PDI Case) promulgated on March 28, 2017 by the Court's Second Division, the Court declined to follow the *Next Mobile* case.

In the *PDI Case*, the CTA First Division granted the Petition for Review field by PDI and canceled the Formal Letter of Demand (FLD) and Assessment Notices issued by the Bureau of Internal Revenue (BIR) for deficiency Value Added Tax (VAT) and income tax for taxable year 2004.

> "The CTA First Division further ruled that Section 222(b) of the NIRC authorized the extension of the original three-year prescriptive period by the execution of a valid waiver upon the agreement in writing between the taxpayer and the BIR, provided: (1) the agreement was made before the expiration of the three-year period and (2) the guidelines in the proper execution of the waiver are strictly followed. The CTA First Division found that while the First and Second Waivers were executed in three copies, the BIR Failed to provide the office accepting the waivers with their respective third copies. The CTA First Division found that the third copies were still attached to the docket of the case. The CTA First Division also found that the BIR Failed to prove that the third Waiver was executed in three copies. Further, the revenue official who accepted the Third Waiver was not authorized to do so. The CTA First Division also noted that the Second Waiver would have expired on 31 December 2007 but the Third Waiver was already executed on 20 December 2007, meaning there was enough time to have it signed by the ACIR of the Large Taxpayers Service. The CTA First Division concluded that due to the defects in the

[33] G.R. No. 213943, March 28, 2017.

> Waivers, the three-year period within which to assess PDI was not extended. x x x"[34]

The CTA Court *En Banc* affirmed the CTA First Division's Decision and denied the CIR's motion for reconsideration. In ruling on the issue of prescription, the Supreme Court said:

> "Indeed, the Waivers executed by the BIR and PDI were meant to extend the three-year prescriptive period, and would have extended such period were it not for the defects found by the CTA. This further shows that at the outset, the BIR did not find any ground that would make the assessment fall under the exceptions.
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> In *Commissioner of Internal Revenue v. Kudos Metal Corporation*[35], the Court ruled:
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> x x x x x x x x x
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> In this case, the CTA found that contrary to PDI's allegations, the First and Second Waivers were executed in three copies. However, the CTA also found that the CIR failed to provide the office accepting the First and Second Waivers with their respective third copies, as the CTA found them still attached to the docket of the case. In addition, the CTA found that the Third Waiver was not executed in three copies.
>
> **The failure to provide the office accepting the waiver with the third copy violates RMO 20-90 and RDAO 05-01. Therefore, the First Waiver was not properly executed on 21 March 2007 and thus, could not have extended the three-year prescriptive period to assess and collect taxes for the year 2004.** To make matters worse, the CIR committed the same error in the execution of the Second Waiver on 5 June 2007. Even if we consider that the First Waiver was validly executed, the Second Waiver failed to extend the prescriptive period because its execution was contrary to the procedure set forth in RMO 20-90 and RDAO 05-01. Granting further that the First and Second Waivers were validly executed, the Third Waiver executed on 12 December 2007 still failed to extend the three-year prescriptive period because it was not executed in three copies. In short, the records of the case showed that the CIR's three-year prescriptive

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[34] *Id.* at p. 12.
[35] 634 Phil. 314 (2010).

period to assess deficiency tax had already prescribed due to the defects of all the Waivers.

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The CIR also argues that PDI is estopped from questioning the validity of the Waivers. We do not agree. As stated by the CTA, the BIR cannot shift the blame to the taxpayer for issuing defective waivers.[36] The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself.[37] A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[38]"

The Supreme Court, therefore, sustained the CTA En Banc's findings which cancelled the FLD and Assessment Notice for taxable year 2004 issued by the BIR against PDI.

Similar to the circumstances in the PDI case, the Court in Division had the following findings in its Decision:

"As per the findings of the Court and contrary to the allegations of petitioner, the 1st Waiver was indeed executed by petitioner on November 2, 2010, accepted by respondent on November 8, 2010, and a copy of which was furnished to and received by petitioner on November 9, 2010. However, despite the existence of the 1st Waiver having been indubitably established which would have extended respondent's period to assess to May 4, 2011, the same is **fatally infirm for failing to specify the amount of tax due**.

x x x x x x x x x

The infirmities in the 1st Waiver, however, effectively did not extend respondent's period to assess. A waiver, being void from its inception, does not give rise to a right for which respondent may exercise; it was as if no waiver to extend the period to assess was ever executed. The first waiver being a void one, the succeeding

[36] *Id.* at Note 2.
[37] *Id.*
[38] *Id.*

waivers executed by the parties have no force and effect as to bind the parties.[39]

With respondent's failure to issue the assessment notices within three (3) years from the date petitioner filed its income and expanded withholding tax returns, in view of the invalidity of the three Waivers of the Statute of Limitations, respondent's period to assess had already prescribed. **The inescapable conclusion, therefore, is that the 2007 FAN is void for having been issued beyond the prescriptive period and, as a consequence thereof, the assessments for deficiency IT and EWT must be cancelled.**" *(Emphasis supplied)*

It is at this juncture that the following provisions in the Civil Code on contracts becomes relevant and imperative, especially in the light of the long-standing doctrine that waivers are bilateral contracts.[40]

ART. 1318. There is no contract unless the following requisites concur:

(1) **Consent of the contracting parties;**
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established.

x x x x x x x x x

ART. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, **provided all the essential requisites for their validity are present**. However, **when the law requires that a contract be in some form in order that it may be valid or enforceable**, or that a contract be proved in a certain way, **that requirement is absolute and indispensable.** In such cases, the right of the parties stated in the following article cannot be exercised. *(Emphases supplied)*

In this particular case, the 1st waiver is fatally infirm for lack of authority of the signatory to sign the waiver on behalf of the taxpayer. The aforequoted provisions lend support to that reasoning why the 1st waiver is a void contract -- there is no consent and since it lacks an essential requisite for the waiver to be valid, it is, therefore, **void**. The nullity of the 1st Waiver did not stem from the

[39] Philippine Hoteliers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6985, March 9, 2009.
[40] *Id.* at Note 2.

illegality of the cause or object of the contract and the acts surrounding its execution were not delicts or crimes. Hence, the *in pari delicto* rule cannot apply.

Moreover, in accordance with Article 1356 of the Civil Code, the law requires that the waiver be in a specific form, the proper form prescribed by RMO 20-90, as upheld by the Supreme Court in the *Kudos Metal case.*[41] This requirement has been previously discussed and emphasized in numerous cases.[42] This case is no different.

WHEREFORE, petitioner's prayer in the Petition that judgment be rendered declaring respondent's right to assess petitioner for deficiency value added tax (VAT) for taxable year (TY) 2007 barred by prescription is **GRANTED.** Accordingly, the Court **DECLARES** the Final Decision on Disputed Assessment dated April 11, 2015 **PRESCRIBED** and the same is hereby **REVERSED** and **SET ASIDE.** The Formal Assessment Notice is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

With Dissenting Opinion
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[41] *Id.* at Note 6.
[42] Scandinavian Motors Corp. v. Commissioner of Internal Revenue, CTA Case No. 7269, March 26, 2008; Bovis Lend Lease Projects Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 6825, August 23, 2007; Commissioner of Internal Revenue v. Maruka Enterprises, Inc., CTA EB Case No. 105, June 1, 2006; Guoco Holdings (Phils.) v. Commissioner of Internal Revenue, CTA Case No. 6122, August 31, 2005; Maruka Enterprises, Inc. v. Commissioner of Internal Revenue, CTA Case No. 5977, February 2, 2005.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MEDICARD PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 9049**
- *versus* -	Members: **Bautista,** *Chairperson,* **Fabon-Victorino,** *and* **Ringpis-Liban,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 12 2018 9:46 a.m.

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DISSENTING OPINION

BAUTISTA, J:

I disagree with the finding of the *ponencia* that the Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (the "Waivers") executed by the parties were defective and therefore did not extend the three (3)-year period for respondent to assess petitioner.

Section 203 in relation to *Section 222(b) of the 1997 National Internal Revenue Code, as amended* (the *"1997 NIRC"*)[1] provides that internal revenue taxes shall be assessed within three (3) years from the last day prescribed by law for the filing of the return or the day the return was filed, whichever comes later, unless the Commissioner of Internal Revenue ("CIR") and the taxpayer timely agree in writing to extend the period to assess. The relevant provisions state:

> **Sec. 203.** ***Period of Limitation Upon Assessment and Collection.*** - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no

[1] Republic Act No. 8424, as amended (1997).

> 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 the 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.
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> xxx xxx xxx
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> **Sec. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -***
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> xxx xxx xxx
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> (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

The exception to the three (3)-year prescriptive period for assessment of taxes discussed above refers to the execution by the CIR and the taxpayer of a valid Waiver. The Supreme Court, in *CIR v. Kudos Metal Corporation*[2], provided the guidelines for the execution of a valid Waiver, as follows:

> Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19__", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

[2] G.R. No. 178087, May 5, 2010, 620 SCRA 232.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

In *Philippine Journalists, Inc. v. CIR*[3], the Supreme Court held that the guidelines for the execution of a Waiver must be strictly complied with as it is a derogation of the taxpayer's right against unreasonable investigation, thus:

> The NIRC, under Section 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subject to

[3] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

> further investigation for taxes after the expiration of a reasonable period of time. As was held in *Republic of the Phils. v. Ablaza*:
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> xxx xxx xxx
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> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that <u>the RMO must be strictly followed,</u> thus:
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> xxx xxx xxx
>
> <u>A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed</u>. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is 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. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, <u>the exceptions to the law on prescription should perforce be strictly construed</u>. RMO No. 20-90 explains the rationale of a waiver:
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> xxx xxx xxx[4]

Accordingly, prevailing jurisprudence mandates the strict observance of the guidelines provided in *RMO No. 20-90* and *Revenue Delegation Authority Order ("RDAO") No. 05-01*[5] as regards the execution of Waivers. Care should be taken, however, in the application of the aforementioned general rule (*i.e.*, strict observance of the tax regulations as regards the execution of Waivers) considering that the Supreme Court carved out an exception to the strict application of *RMO No. 20-90* and *RDAO No. 05-01* in the case of *CIR*

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[4] Underscoring ours.
[5] August 2, 2001.

v. Next Mobile, Inc.[6]

In the *Next Mobile case,* the Supreme Court held that while faithful compliance with the provisions of *RMO No. 20-90* and *RDAO No. 05-01* must be observed in order for a Waiver to be valid and binding, the equitable principles of *in pari delicto,* unclean hands, and estoppel should be applied such that the validity of defective Waivers should be upheld in keeping with the lifeblood theory of taxation. The relevant discussion of the Supreme Court reads:

> 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 [No.] 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.
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> *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.
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> *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

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

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 [No.] 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.

In the present case, the *ponencia* found the Waivers defective for the following reasons: *(1)* the authority of petitioner's representative who signed the Waivers was neither in writing, nor was it duly notarized; *(2)* the date of acceptance by the Bureau of Internal Revenue on the first waiver was not indicated on petitioner's copy of the

Waiver; and *(3)* petitioner's fact of receipt of the second Waiver was not indicated in the original copy.

I humbly submit that petitioner's failure to submit to respondent the authority of petitioner's representative via a written and notarized document renders petitioner *in pari delicto* with respondent; thus, the exception in the *Next Mobile case* is applicable in the present case. In executing the Waivers, both petitioner and respondent have obligations insofar as the authority of petitioner's representative is concerned. Petitioner has the duty to ensure that its representative is duly authorized and such authority must be embodied in a written and notarized document. On the other hand, respondent has the duty to confirm the authority of petitioner's representative prior to respondent's approval to the Waivers. Both parties in the present case failed to perform their obligations. Having failed in this respect, they are to be considered *in pare delicto* and to have not come before the Court with clean hands. Consequently, petitioner and respondent are estopped from raising the defects in the Waivers as arguments to their advantage. Following the Supreme Court's pronouncements in the *Next Mobile case*, the validity of the Waivers in the present case should be upheld and the formal assessment notice issued by respondent on November 6, 2013 shall be deemed to have been timely made.

In view of the foregoing discussion, I vote to uphold respondent's assessment for deficiency value-added tax ("VAT") for calendar year 2007; respondent's right to assess petitioner for deficiency VAT is not barred by prescription. Let trial proceed for the determination of petitioner's liability for the deficiency VAT assessment.

LOVELL R. BAUTISTA
Associate Justice