REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JG SUMMIT HOLDINGS, INC.,
Petitioner,

CTA CASE NO. 9147

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 11 2020 8:25 am

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RESOLUTION

BACORRO-VILLENA, J.:

On 12 March 2020, this Court dismissed the Petition for Review filed by herein petitioner JG Summit Holdings, Inc. (**petitioner**) for lack of jurisdiction. The dispositive portion of the Decision reads:

> ...
>
> **WHEREFORE**, the foregoing considered, petitioner's Amended Petition for Review dated 22 October 2015 is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**
>
> ...

As can be recalled, the foregoing conclusion was based on the *ratio* that petitioner's time to raise its appeal before the Court of Tax Appeals (**CTA**) had already lapsed.

In the assailed Decision, it was found that more than nine (9) months have already lapsed from petitioner's receipt of the Commissioner of Internal Revenue's (**respondent's/CIR's**) Final Decision on Disputed Assessment[1] (**FDDA**) before it filed its Petition for Review with the CTA. In the *interim*, respondent issued a Revised FDDA (**RFDDA**) dated 20 August 2015[2] as a result of petitioner's request for reconsideration[3] of the FDDA.

The assailed Decision did not consider the date of petitioner's receipt of the RFDDA as the reckoning point from which the latter's time to appeal was to run. Basing on the appeal period embodied in Section 228[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Revenue Regulations (**RR**) No. 12-99[5], the

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1 Exhibit "R-14", BIR Records, pp. 1066-1077.

2 Exhibit "R-17", id., pp. 1361-1372

3 Exhibit "R-16", id., pp. 1292-1302

4 **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:

...

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.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

5 3.1.5. *Disputed Assessment*. – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof...

...

Court concluded that petitioner's failure to appeal the FFDA within thirty (30) days from its receipt was fatal to the perfection of its judicial protest.

Disagreeing with the Court's findings, petitioner filed the instant Motion for Reconsideration (**MR**). Here, petitioner raises *similar* issues as found in its Petition for Review. Of primary consideration among them is this Court's jurisdiction over petitioner's petition, as the resolution of which shall determine the propriety of action on the other issues raised by petitioner.

Thus, in its bid to have the assailed Decision set aside, petitioner reiterates and maintains that, since respondent (then Commissioner Kim Jacinto-Henares [**CIR Henares**]) revised her decision in the RFDDA, respondent intended the same to be her final decision. It argues that the receipt of the RFDDA and *not* the FDDA should be considered as the date from which its 30-day period to file an appeal to the CTA should be tacked.

In addition to its invocation that this Court has jurisdiction over its Petition for Review, petitioner likewise insists that respondent's assessment against it for deficiency Income Tax (**IT**), Value-Added Tax (**VAT**), Documentary Stamp Tax (**DST**) and Improperly Accumulated Earnings Tax (**IAET**) plus 50% surcharge, 20% deficiency and

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If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable.

delinquency interest for TY 2009 must be invalidated. To invalidate the assessment, petitioner contends, to wit:

I.
THERE IS NO ELECTRONIC LETTER OF AUTHORITY (eLA) TO SUPPORT THE AUDIT INVESTIGATION THAT RESULTED IN THE ASSESSMENT;

II.
RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR DEFICIENCY INCOME TAX AND VALUE-ADDED TAX FOR THE YEAR 2009 HAS ALREADY PRESCRIBED;

III.
THERE ARE NO FINAL NOTICES ATTACHED TO THE FORMAL LETTER OF DEMAND; and,

IV.
THE FORMAL LETTER OF DEMAND DID NOT PROVIDE A DEFINITE AMOUNT OF TAX LIABILITY FOR WHICH THE TAXPAYER IS ACCOUNTABLE AND IT ALSO FAILED TO STATE THE DEFINITE DUE DATE FOR PAYMENT IN THE ASSESSMENT.

On the other hand, respondent, in his Comment[6], maintains that the Court properly dismissed the subject Petition for Review as it has no jurisdiction over it having been filed beyond the thirty (30)-day period provided by law.

The Court resolves below, in *seriatim*.

THE COURT'S JURISDICTION

There is no question that Section 228 of the NIRC of 1997, as amended, lays down the procedure in protesting the assessment:

...

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.

...

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6 Division Docket, Volume V, pp. 2222-2229.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within **thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[7]
>
> ...

As stated in the assailed Decision, the limits of this Court's jurisdiction is unaffected by the parties' erroneous interpretation of the law. The law is clear enough that the Court could only expect compliance, specially so that the remedies available to a taxpayer have already been laid down.

In its MR, however, petitioner argues that the RFDDA superseded the FDDA and is therefore respondent's final decision that is appealable to this Court. As a consequence, the period to file the appeal before this Court should be reckoned from the receipt of the RFDDA and not of the FDDA. Petitioner added that since the following portions both appear in the FDDA and RFDDA, it means that respondent intended the RFDDA to take the place of the FDDA, to wit:

> ...
>
> It is requested that your aforesaid deficiency income tax/taxes liability be paid immediately upon receipt hereof, inclusive of penalties. This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeal or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from date of receipt hereof....
>
> ...

We do not agree.

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7 Emphasis supplied.

It is undisputed that a party adversely affected by a decision of the CIR may file an appeal with this Court within thirty (30) days after the receipt of such decision.[8]

As noted by petitioner itself, the FDDA issued to it contains a statement that "[t]his is our final decision". The issuance of the said FDDA by then CIR Henares, taken in the light of the provisions of RR 12-99[9], as amended by RR 18-2013[10], only means that the same is the very decision appealable to this Court and no other. Specifically, Section 3.1.4 of RR 12-99, as amended by RR 18-13 provides:

> ...
>
> If the protest or administrative appeal, as the case may be, is **denied**, in whole or in part, **by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial** of the protest or administrative appeal, as the case may be, **shall not toll the thirty (30)-day period to appeal to the CTA.**[11]
>
> ...

Based on the said provision, it is clear that the denial of the protest by then CIR Henares must be appealed to this Court within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable. While petitioner may file a motion for reconsideration of then CIR Henares' denial, the same shall not toll the 30-day period to appeal to this Court. Simply stated, while petitioner is not prevented from filing a request for reconsideration with respondent, the resort to this Court within the 30-day period is mandatory and indispensable in order to prevent such decision from becoming final, executory and demandable.

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8 See Section 11 of Republic Act (RA) No. 1125, as amended by RA 9282, and Section 3(a), Rule 8 of the RRCTA.

9 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

10 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

11 Emphasis supplied.

With respect to petitioner's contention that the fact that the same wordings of the FDDA likewise appeared in the RFDDA should only mean that respondent really intended the RFDDA to replace the FDDA, the same is likewise bereft of merit. Such portions[12] of the FDDA and RFDDA were only lifted and substantially reproduced from Annex C of RR 18-2013 which contains the pro-forma FDDA, as follows:

> ...
>
> It is requested that your aforesaid deficiency income tax liability be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeal or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from date of receipt hereof, otherwise our said deficiency income tax assessment shall become final, executory and demandable.
>
> ...

Thus, the fact that the subject portion of the FDDA also appeared in the RFDDA, which, in turn, was merely substantially replicated from Annex C of RR 18-2013, could not have meant anything other than reiteration of what is provided under RR 18-2013, that is, the denial of the CIR Henares must be appealed to this Court within thirty (30) days from date of receipt of the said decision.

This Court could only speculate as to why respondent issued a RFDDA even after the lapse of the 30-day period from the receipt of the FDDA and no appeal has been taken with this Court. However, what is certain is that this Court may only take up matters which are clearly within its jurisdiction and such jurisdiction is acquired by the timely filing of an appeal with this Court within thirty (30) days from receipt of the FDDA issued by CIR Henares.

While the issuance of the RFDDA might have created a confusion as to which decision constituted respondent's "final" decision, this Court is simply not prepared to rule otherwise and in contravention with the established rules implementing assessments which clearly state that the denial of the protest by the *CIR herself* must be appealed to the CTA within thirty (30) days and a motion for reconsideration of the CIR's denial shall *not* toll the 30-day period to appeal to the CTA.

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12 See page 5.

This Court is not unaware of the Second Division's Decision in *Capitol Steel Corporation v. Commissioner of Internal Revenue*[13], where this Court reckoned the said 30-day period from the receipt of the RFDDA and not from the receipt of the FDDA.

However, aside from the fact that this Court is not bound by its decisions, as only the decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system[14], the same is not on all fours with this case considering that the FDDA and RFDDA subject thereof were issued by the CIR's duly "authorized representative" and *not* the CIR herself (as herein case).

In fact, the only interpretation supported by jurisprudence, is that "[a] whole or partial denial by the CIR may be appealed to the CTA"[15] and "a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA".[16]

With the above discussion, this Court affirms that it has no longer jurisdiction over the subject Petition for Review.

At any rate, even if this Court would assume jurisdiction, this Court still finds no reason to invalidate the assessment against petitioner based on the grounds raised in its MR, as would be further discussed in detail below.

THE ABSENCE OF AN ELECTRONIC LETTER OF AUTHORITY DOES NOT INVALIDATE THE ASSESSMENT

Petitioner avers that respondent's assessments are void due to the absence of electronic Letter of Authority (**eLA**) as required under

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13 CTA Case No. 9240, 26 October 2017.

14 See *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

15 *Philippine Amusement and Gaming Corporation v. Commissioner of Internal Revenue*, G.R. No. 208731, 27 January 2016.

16 *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*, G.R. No. 179343, 21 January 2010.

Revenue Memorandum Order (**RMO**) No. 69-2010, which provides the following:

> ...
>
> 6. All LAs, whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, **shall be retrieved and replaced with the new eLA form (BIR Form No. 1966).**
>
> 7. All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation, **subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order.**[17]
>
> ...

Petitioner's argument must fail.

Based on Section 13 of the NIRC of 1997, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[18] The necessity of a valid LOA to authorize the audit and investigation of a taxpayer is not only an administrative but a statutory requirement. Accordingly, a valid LOA is essential to the validity of an audit, and consequently, of the assessment that may be issued thereafter.[19]

In the instant case, respondent issued LOA No. LOA-127-2010-00000012 on 14 May 2010 authorizing the examination of the books of accounts of petitioner for the taxable year 2009.[20]

It is true that that RMO No. 69-2010 requires that manual LOAs be retrieved and be replaced with the new eLA. However, RMO No. 69-2010 does not state that the conduct of the audit pursuant to the

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17 Emphasis supplied.

18 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

19 Id.

20 Paragraph 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 431.

previously-issued manual LOA would be invalidated in the event that a new eLA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLA.

As it is, the manual LOA still validly clothed the examiners the authority needed to conduct an examination or assessment in accordance with Sections 10 and 13 of the NIRC of 1997.

THE PERIOD TO ASSESS PETITIONER HAD NOT PRESCRIBED

Petitioner likewise contends that respondent's right to assess had already prescribed because the Second Waiver is invalid.

Section 203 of the NIRC of 1997 limits the period to assess to only three (3) years, subject to the exceptions provided under Section 222 of the NIRC of 1997.[21] As a general rule, petitioner has three (3) years to assess taxpayers from the filing of the return. An exception to the rule of prescription is found in Section 222(b) of the NIRC of 1997, as amended, which provides:

> ...
>
> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) ...
>
> (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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> ...

Anent the afore-quoted, the Supreme Court in *Commissioner of Internal Revenue v. Kudos Metal Corporation*[22], lays down the guidelines for the execution of a valid waiver in accordance with RMO

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21 *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, 22 March 2017.

22 G.R. No. 178087, 05 May 2010.

No. 20-90 issued on 04 April 1990 and Revenue Delegation Authority Order (**RDAO**) No. 05-01 issued on 02 August 2001, to wit:

> ...
>
> 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:
>
> 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.
>
> 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 the instant case, a review of petitioner's three (3) waivers which the Bureau of Internal Revenue (**BIR**) accepted shows that these waivers have fully and adequately hurdled all the foregoing requisites as follows:

	Date of execution by the taxpayer	Date of acceptance by the BIR	Extended up to
First Waiver[23]	April 2, 2012[24]	April 12, 2012	December 31, 2012
Second Waiver[25]	December 7, 2012	December 3, 2012	December 31, 2013
Third Waiver[26]	October 9, 2013	October 17, 2013	June 30, 2014

Contrary to petitioner's claim that the Second Waiver does not show that it received the accepted waivers, a careful examination of the certified true copy of the Second Waiver attached to the BIR Records reveals the contrary (and that petitioner received it on 07 December 2012).

Petitioner's insistence that the Second Waiver is void because the BIR's date of acceptance came ahead of petitioner's date of execution is similarly without merit.

It must be emphasized that petitioner only raised the said irregularity for the first time on appeal. Petitioner did not raise the same in its protest to the FLD[27], nor in the Request for Reconsideration[28], nor in the Amended Petition for Review.[29]

Even assuming that the Second Waiver is defective, the records show that petitioner and respondent continued to deal with each other despite having knowledge of the supposed irregularity in the Second Waiver. Petitioner freely and voluntarily executed the Third Waiver prior to the expiration of the Second Waiver and respondent accepted the Second Waiver and the subsequent Third Waiver. Hence, both parties are *in pari delicto*; in which case, the waiver's validity should be upheld.

[23] Exhibit "R-2", BIR Records, p. 767.
[24] *Date of notary acknowledgement.*
[25] Exhibit "R-3", BIR Records, p. 767D.
[26] Exhibit "R-4", id., p. 767I.
[27] Division Docket, Volume I, pp. 54-68.
[28] Id., pp. 98-108.
[29] Id., pp. 138-169.

The pronouncement of the Supreme Court in *Commissioner of Internal Revenue v. Next Mobile, Inc.*[30] (**Next Mobile**) is instructive when both parties are *in pari delicto*, to wit:

> ...
>
> The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.
>
> *First*, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other...
>
> 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... 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

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30 G.R. No. 212825, 07 December 2015; Citations omitted, emphasis supplied and italics in the original text.

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 [BIR] was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, [BIR]'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 *Asian Transmission Corporation v. Commissioner of Internal Revenue*[31], the Supreme Court categorically held that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes and that the CIR may not be solely blamed for any defects in the execution of the waiver. Moreover, after having benefitted from the defective waivers, the taxpayer should not be allowed to assail them:

...

We agree with the holding of the CTA *En Banc* that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile, Inc.* The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its

[31] G.R. No. 230861, 19 September 2018; Emphasis supplied.

> authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, **ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates.**
>
> Moreover, **the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit.** It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse...
>
> ...
>
> Thus, the CTA *En Banc* did not err in ruling that ATC, after having benefited from the defective waivers, should not be allowed to assail them. In short, the CTA *En Banc* properly applied the equitable principles of *in pari delicto*, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile case.*
>
> ...

The principle of estoppel enunciated in *Next Mobile* applies to the present case. By deliberately issuing another waiver, after the disputed Second Waiver, deriving benefits therefrom (as petitioner gained additional time and opportunity to gather and submit documents), thereby postponing the issuance of the assessment notices, and by failing to impute their validity at the earliest possible opportunity, estopped petitioner from claiming that the waivers are invalid. Likewise, that the prescriptive period to assess was not extended.

Additionally, petitioner's partial payment of the assessment items with reduced deficiency taxes issued beyond the prescriptive period is an implied admission of the validity of all its waivers. In the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[32], the Supreme Court held, to wit:

> ...
>
> RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required

[32] G.R. No. 170257, 07 September 2011; Citations omitted and emphasis supplied.

under Section 223 (b) of the 1977 Tax Code. RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.

The Court disagrees.

Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.

Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. **Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes.** Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.

...

As it stands, the assessment was made within the period of limitation on respondent's right to assess petitioner as shown below:

Period covered	Date of actual filing	Last day prescribed by law to file the return[33] [34] [35] [36]	Last day to assess under Section 203 of the NIRC of 1997[37]	Receipt date of the FLD/DAN
Income Tax				

33 Section 77(B), NIRC of 1997.
34 Section 114(A), NIRC of 1997.
35 Section 200, NIRC of 1997; Cf.: Section 5, Revenue Regulations (RR) No. 6-01.
36 Section 29, NIRC of 1997; Cf.: Section 6, RR No. 2-01.
37 *After considering First, Second, and Third Waivers.*

<table>
<tr><th>Period covered</th><th>Date of actual filing</th><th>Last day prescribed by law to file the return[33] [34] [35] [36]</th><th>Last day to assess under Section 203 of the NIRC of 1997[37]</th><th>Receipt date of the FLD/DAN</th></tr>
<tr><td>2009 Annual Income Tax Return</td><td>April 14, 2010[38]</td><td>April 15, 2010</td><td>June 30, 2014</td><td>February 27, 2014</td></tr>
<tr><td colspan="4">Value-Added Tax (VAT)</td><td></td></tr>
<tr><td>First Quarter of 2009</td><td>April 27, 2009[39]</td><td>April 25, 2009</td><td rowspan="4">June 30, 2014</td><td rowspan="4">February 27, 2014</td></tr>
<tr><td>Second Quarter of 2009</td><td>July 24, 2009[40]</td><td>July 25, 2009</td></tr>
<tr><td>Third Quarter of 2009</td><td>October 26, 2009[41]</td><td>October 25, 2009</td></tr>
<tr><td>Fourth Quarter of 2009</td><td>January 21, 2010[42]</td><td>January 25, 20010</td></tr>
<tr><td colspan="4">Documentary Stamp Tax (DST)</td><td></td></tr>
<tr><td>January 2009</td><td>February 18, 2009[43]</td><td>February 5, 2009</td><td rowspan="6">June 30, 2014</td><td rowspan="6">February 27, 2014</td></tr>
<tr><td>June 2009</td><td>July 3, 2009[44]</td><td>July 5, 2009</td></tr>
<tr><td>October 2009</td><td>November 11, 2009[45]</td><td rowspan="4">November 5, 2009</td></tr>
<tr><td>October 2009</td><td>November 11, 2009[46]</td></tr>
<tr><td>October 2009</td><td>November 18, 2009[47]</td></tr>
<tr><td>October 2009</td><td>December 1, 2009[48]</td></tr>
<tr><td colspan="5">Improperly Accumulated Earnings Tax (IAET)</td></tr>
<tr><td>2009 IAET Return</td><td>-</td><td>January 15, 2010</td><td>June 30, 2014</td><td>February 27, 2014</td></tr>
</table>

38 BIR Records, p. 358.
39 Id., p. 534.
40 Id., p. 528.
41 Id., p. 522.
42 Id., p. 516.
43 Supra at note 2, p. 1365.
44 Id.
45 Id.
46 Id.
47 Id.
48 Id.

THE FORMAL LETTER OF DEMAND WAS ACCOMPANIED BY ASSESSMENT NOTICES WHICH PROVIDE A DEFINITE DUE DATE FOR PAYMENT

Petitioner avers in its MR that the FLD was not accompanied by assessment notices in violation of Section 228[49] of the NIRC of 1997 and Section 3.1.3[50] of RR 12-99, as amended by RR 18-13.

Contrary to petitioner's claim, a careful examination of the original copy of the FLD/FAN to the BIR Records shows that the subject assessment notices were received by petitioner through Michelle Abellanosa (**Abellanosa**) on 27 February 2014.[51]

It bears stressing that Abellanosa admitted in her Judicial Affidavit that she received the FLD but she did not mention the absence of assessment notices.[52] However, Mr. Joel M. Aguila (**Aguila**), respondent's witness, categorically said in his Judicial Affidavit[53] that the assessment notices, together with the FLD, were personally served on petitioner on 27 February 2014. His testimony reveals:

> ...
> 44Q You also mentioned that the Final Assessment Notices (FAN), signed by the Commissioner of Internal Revenue, were issued and served to petitioner, if these FAN will be shown to you, will you be able to identify the same?
>
> 44A Yes.

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49 **Sec. 228.** *Protesting of Assessment.* —
...
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.

50 SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
...
3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof).

51 Exhibit "R-10", BIR Records, pp. 920-926.

52 Exhibit "P-55", Division Docket, Volume, III, pp. 932-949.

53 Exhibit "R-18", id., Volume IV, pp. 1969-1980.

> 45Q I have with me a document entitled Audit Result/Assessment Notice (BIR Form No. 0401) found in pages 920 to 926 of the BIR Records and marked as Exhibit R-10 for the respondent, what relation does this document have to the FAN that you mentioned earlier?
>
> 45Q These are the Final Assessment Notices (FAN) that I mentioned.
>
> 46Q You mentioned that the **Formal Letter of Demand and FAN were served to petitioner,** what is your proof that the FLD and FAN were served to petitioner?
>
> 46A **Mr. Allan Maniego personally served the Formal Letter of Demand (FLD) with attached Details of Discrepancies and the Final Assessment Notices (FAN) which were received by petitioner's Controller, Michelle Abellanosa.** To prove such service, Mr. Maniego executed an Affidavit of Service of FLD.[54]
>
> ...

Petitioner's counsel, during his cross-examination of Aguila, did not also raise the absence of FAN. Petitioner's counsel even stated in his Comment on Respondent's FOE[55] that *"it has no objection to the admission of Exhibits "R-1",[56] "R-2",[57] "R-4"[58] to "R-17"[59] of Respondent in his Formal Offer of Evidence dated 25 January 2019."*[60] Notably, petitioner also failed to mention the absence of FAN in its memorandum.

With the foregoing disquisitions, this Court could only deem that respondent properly served the FLD together with the FAN on petitioner. A closer look at the FAN[61] also reveals that there was a definite due date for payment as shown on the face of the assessment notices of **March 10, 2014.**

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54 Emphasis supplied.
55 Division Docket, Volume V, p. 2053.
56 Letter of Authority LOA-127-2010-00000012 dated 14 May 2010, BIR Records, p. 1.
57 Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code notarized on 02 April 2012, BIR Records, p. 767.
58 Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code executed on 09 October 2013, BIR Records, pp. 767H to 767I.
59 Revised Final Decision on Disputed Assessment with attached Details of Discrepancies, BIR Records, pp. 1361 to 1372.
60 Comment (to the Respondent's Formal Offer of Evidence), Division Docket, Volume V, p. 2053.
61 Supra at note 51.

DEFECTIVE FDDA AND REVISED FDDA WOULD NOT RENDER THE ASSESSMENT VOID

The supposed absence of fixed date for payment in the FDDA[62] and the Revised FDDA[63] likewise do not render the assessment void.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[64] (**Fitness By Design**), the Supreme Court declared:

> ...
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; **it also includes a demand for payment within a period prescribed**. Its main purpose is to determine the amount that a taxpayer is liable to pay.
> ...
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.
> ...

However, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[65] (**Liquigaz**), citing Section 3.1.5[66] of RR 12-99, as amended RR 18-2013[67], the Supreme Court ruled that the invalidity

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62 Supra at note 1.
63 Supra at note 2.
64 799 Phil. 391-420 (2016); Citations omitted and emphasis supplied.
65 G.R. No. 215534, 18 April 2016; Citations omitted and emphasis supplied.
66 **SEC. 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
...
3.1.5 ***Final Decision on a Disputed Assessment (FDDA).*** — The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise,* ***the decision shall be void*** (see illustration in ANNEX "C" hereof), and (ii) that the same is his *final decision.* (Emphasis supplied)
67 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

of one does not affect the other as respondent's decision is different from the final assessment notice, to wit:

> ...
>
> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other**—unless the law or regulations otherwise provide.
>
> ...

As such, even if We are to rule that FDDA and RFDDA are invalid and defective for lack of fixed date prescribed for the payment of the deficiency taxes, the assessment against petitioner would remain valid as the invalidity of one does not necessarily result to the invalidity of the other.

With the above discussions, this Court finds no reason to disturb the assailed Decision.

WHEREFORE, petitioner's Motion for Reconsideration dated 17 June 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice