REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BELLE CORPORATION,
Respondent.

CTA EB No. 962
(CTA Case No. 8175)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

AUG 15 2013 CwApolinario 9:05 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Commissioner of Internal Revenue (CIR), assailing the *Decision*[1] dated September 18, 2012, and the *Resolution*[2] dated November 19, 2012, of the former Third Division of the Court cancelling and setting aside the assessments issued against respondent for deficiency expanded withholding tax (EWT) and final withholding tax (FWT) and compromise penalty on withholding tax on compensation (WTC) in the total amount of P19,536,607.66 for taxable year 2002 for being issued beyond the three-year prescriptive period.

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[1] *Rollo*, pp. 40-60.
[2] *Rollo*, pp. 61-62.

The Facts

The facts, as culled from the records[3], are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), authorized under the National Internal Revenue Code (NIRC) of 1997, as amended, to examine any taxpayer and to assess the correct amount of internal revenue tax. She may be served with summons and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.

Respondent filed its EWT and FWT Returns for taxable year 2002 on the following dates:

Month	EWT Returns Date Filed	FWT Returns Date Filed
January	February 11, 2002	February 11, 2002
February	March 11, 2002	March 11, 2002
March	April 10, 2002	April 10, 2002
April	May 10, 2002	May 10, 2002
May	June 10, 2002	June 10, 2002
June	July 10, 2002	July 10, 2002
July	August 9, 2002	August 12, 2002
August	September 10, 2002	September 10, 2002
September	October 10, 2002	October 9, 2002
October	November 8, 2002	November 8, 2002
November	December 10, 2002	December 10, 2002
December	January 15, 2003	January 14, 2003

On April 21, 2008, respondent received a Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated April 16, 2008.

On May 21, 2008, respondent filed a protest to the FLD/FAN.

On May 25, 2009, respondent received a Final Decision on Disputed Assessment (FDDA) dated May 8, 2009, issued by Zenaida Garcia, OIC-Assistant Commissioner, Large Taxpayers Service.

[3] *Rollo*, pp. 41-44.

On June 24, 2009, respondent filed an appeal to then Commissioner Sixto Esquivias IV, pursuant to Revenue Regulations (RR) No. 12-99, questioning the propriety of the assessment for deficiency EWT and FWT, and the compromise penalty on WTC.

On September 8, 2010, respondent received a Revised Final Decision on Disputed Assessment (RFDDA) dated September 2, 2010, issued by Assistant Commissioner Nestor Valeroso, Large Taxpayers Service-Regular. The RFDDA still found due from respondent the following:

Tax Type/ Assessment No.	Basic	Interest	Compromise Penalty	Total
Deficiency EWT EWT-02-000210	1,192,966.18	1,835,736.36	--	3,028,702.54
Deficiency FWT FWT-02-000063	6,492,400.00	9,990,505.12	--	16,482,905.12
Compromise Penalty - WTC WCP-02-000115	--	--	25,000.00	25,000.00
Total	**7,685,366.18**	**11,826,241.48**	**25,000.00**	**19,536,607.66**

On October 7, 2010, respondent filed its Petition for Review.

On December 2, 2010, petitioner filed her Answer and alleged by way of special and affirmative defenses that: petitioner is liable to pay its deficiency withholding taxes for calendar year 2002 in the total amount of P18,029,811.21 including penalties and interests; withholding tax is not an internal revenue tax that can be subject of an assessment; the period of limitation under Section 203 of the Tax Code is not applicable to assessment of deficiency withholding tax; petitioner was assessed in its capacity as a withholding agent and not in its personality as a taxpayer; the petition was filed out of time considering that petitioner received the FDDA on May 25, 2009, hence, it had until June 25, 2009 within which to file a Petition for Review to the Court of Tax Appeals (CTA); the assessment for taxable year 2002 was issued in accordance with law and regulations; and the burden of proof is on the taxpayer to establish the fact that it is not liable for any deficiency taxes subject of the assessment.

Respondent presented Amelita Vanta, as its sole witness and documentary evidence, marked as Exhibits "A" to "GG", inclusive of their submarkings, which were all admitted by the Court in a Resolution dated October 14, 2011.

On the other hand, petitioner presented Melinda Rugayan, as witness, and documentary evidence, marked as Exhibits "1" to "7" and "9" to "16", inclusive of their submarkings, which were all admitted by the Court in a Resolution dated March 29, 2012.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

Considering respondent's memorandum filed on May 4, 2012 and petitioner's memorandum filed on May 23, 2012, the case was deemed submitted for decision on June 25, 2012.

The former Third Division, in its *Decision*[4] dated September 18, 2012, granted respondent's Petition for Review. Accordingly, the assessments issued against respondent for deficiency EWT and FWT and compromise penalty on WTC for taxable year 2002 were cancelled and set aside for being issued beyond the three-year prescriptive period.

The Motion for Reconsideration[5] filed by petitioner was denied for lack of merit in the Resolution[6] dated November 19, 2012.

Aggrieved, petitioner filed the instant *Petition for Review*[7].

Respondent was ordered to file its comment within ten (10) days from receipt of the Resolution[8] dated December 26, 2012. Respondent filed its Comment/Opposition (To Petitioner's Petition for Review Dated 23 November 2012)[9] on February 8, 2013.

Considering the issues raised by both parties, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[10].

Petitioner filed a Manifestation[11] on March 27, 2013 stating that she is adopting the arguments she raised in the

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[4] *Supra*, Note 1.
[5] *Division Docket*, pp. 581-607.
[6] *Supra*, Note 2.
[7] *Rollo*, pp 1-37.
[8] *Rollo*, pp. 71-72.
[9] *Rollo*, pp. 73-86.
[10] *Rollo*, pp. 94-95, Resolution dated February 21, 2013.

Petition for Review. Respondent filed a Supplemental Comment/Opposition to the Petition for Review with Manifestation[12] on April 12, 2013 stating that it is likewise adopting its arguments in its earlier Comment/Opposition (To Petitioner's Petition for Review Dated 23 November 2012) as its Memorandum. Thus, the above-captioned case was submitted for decision on May 15, 2013.

The Issue

The issues stipulated by the parties were summarized by the former Third Division as follows[13]:

> "The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner may be held liable for deficiency EWT, FWT and compromise penalty on WTC in the total amount of P19,536,607.66, including penalties and interests, for taxable year 2002."

The Ruling of the Court

The Petition for Review has no merit.

Timeliness of filing Petition for Review

As to the timeliness of the filing of respondent's Petition for Review before the Court in Division, *We* rule that the petition was filed on time.

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

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> 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

[11] *Rollo,* pp. 101-103.
[12] *Rollo,* pp. 107-111.
[13] *Rollo,* p. 45.

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**." (Emphasis supplied)

In relation thereto, Section 3.1.5 of RR 12-99[14], provides:

"SEC. 3.1.5.Disputed Assessment. —

xxx xxx xxx

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, demandable, in which case, the protest shall be decided by the Commissioner.** xxx xxx xxx." (Emphasis supplied)

In this case, respondent received the FDDA dated May 8, 2009 issued by Zenaida Garcia, OIC-Assistant Commissioner, Large Taxpayers Service, on May 25, 2009. Applying Section 228, respondent had until June 24, 2009 within which to appeal said decision to the Court in Division.

However, on June 24, 2009, instead of filing an appeal to the Court in Division, respondent opted to file an appeal to then CIR Sixto Esquivias IV, pursuant to RR No. 12-99.

On September 8, 2010, petitioner received the RFDDA dated September 2, 2010 issued by Assistant Commissioner

[14] 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 Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

Nestor Valeroso, Large Taxpayers Service-Regular. Pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.5 of RR No. 12-99, petitioner had until October 8, 2010 within which to appeal said decision to the Court in Division. Thus, respondent timely filed its petition for review on October 7, 2010.

As held by this Court *En Banc* in the case of *Moog Controls Corporation Philippine Branch vs. CIR*[15], the above-cited provision of RR No 12-99 is not inconsistent with Sec. 228 of the NIRC of 1997, as amended. On the contrary, it merely implements Sec. 228 by establishing a clear guideline on the nature of a decision rendered by the authorized representative of the Commissioner of Internal Revenue on a disputed assessment. The taxpayer is given a choice whether to appeal the decision to the CIR or to the CTA. It further provides that the decision of the authorized representative will not attain finality if the taxpayer appeals the same to the CIR who shall then be required to decide the protest himself.

Prescription

This Court shall now resolve the issue on whether petitioner's right to assess respondent for the alleged deficiency EWT and FWT is barred by prescription.

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)*

Based on the above provision, internal revenue taxes must be assessed within three years counted from the period

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[15] CTA EB Case No. 44, May 10, 2005.

fixed by law for the filing of the tax return or the actual date of filing, whichever is later.[16]

In relation thereto, Section 2.58(A)(2) of RR No. 2-98, as amended, provides that the EWT and FWT return, shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year. With respect, however, to the period where petitioner availed of the electronic filing and payment (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set.

Records show that respondent filed its EWT returns manually from January to June 2002 and electronically from July to December 2002. On the other hand, the FWT returns were all filed manually.[17]

The Court summarized below the dates relevant to the filing of respondent's tax returns for EWT and FWT and the dates until which to assess respondent:

a. EWT

Month	Date of Filing of EWT Returns	Last Day of Filing as Required by Law	Last Day to Assess
January	February 11, 2002	February 11, 2002 (February 10, 2002 is a Sunday)	February 11, 2005
February	March 11, 2002	March 11, 2002 (March 10, 2002 is a Sunday)	March 11, 2005
March	April 10, 2002	April 10, 2002	April 10, 2005
April	May 10, 2002	May 10, 2002	May 10, 2005
May	June 10, 2002	June 10, 2002	June 10, 2005
June	July 10, 2002	July 10, 2002	July 10, 2005
July	August 9, 2002	August 15, 2002	August 15, 2005
August	September 10, 2002	September 16, 2002 (September 15, 2002 is a Sunday)	September 16, 2005
September	October 10, 2002	October 15, 2002	October 15, 2005
October	November 8, 2002	November 15, 2002	November 15, 2005
November	December 10, 2002	December 16, 2002 (December 15, 2002 is a Sunday)	December 16, 2005
December	January 15, 2003	January 20, 2003	January 20, 2006

[16] *Commissioner of Internal Revenue vs. FMF Development Corporation* (G.R. No. 167765, June 30, 2008).
[17] Per RMO No. 5-02, BIR Form 1601-F (FWT Return) was not initially available in the EFPS.

b. FWT

Month	Date of Filing of FWT Returns	Last Day of Filing as Required by Law	Last Day to Assess
January	February 11, 2002	February 11, 2002 (February 10, 2002 is a Sunday)	February 11, 2005
February	March 11, 2002	March 11, 2002 (March 10, 2002 is a Sunday)	March 11, 2005
March	April 10, 2002	April 10, 2002	April 10, 2005
April	May 10, 2002	May 10, 2002	May 10, 2005
May	June 10, 2002	June 10, 2002	June 10, 2005
June	July 10, 2002	July 10, 2002	July 10, 2005
July	August 12, 2002	August 12, 2002 (August 10, 2002 is a Saturday)	August 12, 2005
August	September 10, 2002	September 10, 2002	September 10, 2005
September	October 9, 2002	October 10, 2002	October 10, 2005
October	November 8, 2002	November 11, 2002 (November 10, 2002 is a Sunday)	November 11, 2005
November	December 10, 2002	December 10, 2002	December 10, 2005
December	January 14, 2003	January 15, 2003	January 15, 2006

As mentioned earlier, respondent received the FLD and FAN dated April 16, 2008 on April 21, 2008. Cleary, the FLD and FAN were issued beyond the three-year period prescribed under Section 203 of the NIRC of 1997, as amended. Thus, petitioner's right to assess respondent for deficiency EWT and FWT has prescribed.

Imposition of Compromise Penalty

This Court notes that petitioner imposed compromise penalty on withholding tax on compensation in the amount of ₱25,000.00, in view of respondent's alleged erroneous data on the personal exemption on some of its employees terminated before December 31, 2002.

Pursuant to Revenue Memorandum Order (RMO) No. 01-90, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[18] Absent any showing that respondent consented to the compromise penalty, the same should not be imposed. Accordingly, this Court holds

[18] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.* (G.R. No. L-35266, January 21, 1991).

that petitioner's imposition of the compromise penalty, without the consent of respondent, cannot be sustained.

Waiver of the Statute of Limitations

Petitioner claims that respondent executed a series of waivers of the statute of limitations.

Section 222 (b) of the NIRC of 1997, as amended, provides that an assessment notice may be issued after the lapse of the three-year prescriptive period, as follows:

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

In relation thereto, BIR issued RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 5-01, which provide for the procedures to be followed in the proper execution of waivers of the statute of limitations.

In *CIR vs. Kudos Metal Corporation*[19], the Supreme Court enunciated the requirements of a properly executed waiver:

> "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 18 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.

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

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." *(Emphasis supplied)*

In the instant case, records show that respondent executed six (6) waivers of the statute of limitations, *to wit*:

Exhibit No.	Date Executed	Date of Acceptance	Last Day Agreed Upon
10	November 29, 2005	November 30, 2005/ December 2 (no year)	June 30, 2006
11	May 29, 2006	June 8, 2006	September 30, 2006
12	August 8, 2006	August 25, 2006	December 31, 2006
13	November 16, 2006	November 28, 2006	June 30, 2007
14	May 15, 2007	May 18, 2007	December 31, 2007
15	November 20, 2007	No date	June 30, 2008

After a careful review of the subject waivers, *We* agree with the findings of the Court in Division that the waivers are defective. Pertinent portions of the assailed decision are quoted hereunder:

"A careful examination of the waivers executed for petitioner reveals that the first and last waivers failed to comply with the above procedure.

To begin with, it is imperative to pass upon the validity of the first waiver executed by Cecilia Patricio on November 29, 2005 (Exhibit "10") in order to determine the propriety of the subsequent waivers.

Upon a careful perusal of the first waiver executed on November 29, 2005, this Court finds the following infirmities:

1) the waiver was executed without the notarized written authority from petitioner authorizing Cecilia Patricio to sign the waiver in behalf of the corporation;

2) the date of acceptance of the waiver was not clearly indicated, as there are two (2) dates appearing to be the date of acceptance: November 30, 2005, which is indicated on the space provided for the date of acceptance; and December 2 (with no year), which is indicated beside the signature of the signatory, Corazon Pangcog, Head Revenue Executive Assistant, Large Taxpayers Service; and

3) the waiver was not properly notarized considering that: the name of the affiant was not specified; there was a superimposition on the date and place of notarization without any counter-signature; and the date and place of issuance of the Community Tax Certificate was not indicated therein.

Considering the above defects in the execution of the first waiver, this Court finds the same invalid, hence, without force and legal effect. Thus, it necessarily follows that the subsequent waivers are likewise without force and effect for having been executed based on an invalid first waiver. There was nothing to extend when the subsequent waivers were executed, as the period for assessment was not tolled nor extended, and had prescribed on February 11, 2005, at the earliest and January 20, 2006, at the latest.

Therefore, for failure of the waiver of the statute of limitation to strictly conform with RMO 20-90 and RDAO 05-01, the period of limitation was not extended, hence, the FLD/FAN dated April 16, 2008, which was received by petitioner on April 21, 2008, is void for having been issued beyond the three (3)-year period to assess."[20]

[20] *Rollo*, pp. 55-57.

Petitioner argues that respondent's voluntary execution of the series of waivers is a unilateral act, hence said waivers should not be considered as contracts. The acceptance by the Commissioner has no further effect as to the validity of the waiver. To bolster its argument, petitioner cited *Stange vs United States*, 282 U.S. 270 (1931), a US case which held that a waiver is not a contract and the provision requiring the Commissioner's signature was inserted for purely administrative purposes and not to convert into a contract what is essentially a voluntary, unilateral waiver of a defense by the taxpayer. Since Section 203 of the NIRC of 1997 was adopted from the United States Internal Revenue Code, the said American jurisprudence provides a certain persuasion.

However, as held in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[21], the waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain.

Even though our income tax laws are of American origin, hence, interpretations by American courts of our parallel tax laws have *persuasive* effect on the interpretation of these laws[22], *We* agree with respondent that they are not controlling in our jurisdiction especially when our jurisprudence is replete with cases on the subject matter.

Petitioner posits that respondent cannot now belatedly make assertions relative to the alleged defects of the waivers. If there were indeed defects in the waivers, why then did it not invoke the same before the BIR? The validity of the waivers cannot be raised as an issue for the first time on appeal.

It must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[23]

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[21] G.R. No. 162852, December 16, 2004.
[22] Chamber of Real Estate and Builders' Association, Inc. vs. Romulo, et. al. (G.R. No. 160756, March 9, 2010).
[23] *Commissioner of Internal Revenue vs. Manila Mining Corporation* (G.R. No. 153204, August 31, 2005).

Petitioner also argues that respondent is already estopped from impugning the validity of the waivers considering that it is quite absurd and unfair that when the FLD and FAN proved to be adverse to respondent, the same waivers utilized by respondent for its own advantage is now being used to defeat the validity of the waivers it executed out of its own volition and free will. *We* are not persuaded.

The Supreme Court already ruled that estoppel does not apply in this kind of case, to wit:

> "**The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.** As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.
>
> Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the 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.**"[24] (*Emphasis supplied, citations omitted*)

Petitioner insists that respondent having availed of the Tax Amnesty Program (TAP), it consequently admits the validity of the assessments and waiver. Petitioner then cited the case of *Rizal Commercial Banking Corporation vs. CIR* (CTA EB Case No. 83) to bolster its claim. Again, *We* are not persuaded.

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[24] *Commissioner of Internal Revenue vs. Kudos Metal Corporation* (G.R. No. 178087, May 5, 2010).

In the case of *Commissioner of Internal Revenue vs. Philex Mining Corporation*[25], the Court *En Banc* has already resolved the issue on whether or not a taxpayer's availment of the tax amnesty automatically means that a taxpayer admits the validity of any prior assessments or waivers. Relevant portions of the decision are quoted below:

> "The Court En Banc quotes with approval the disquisition made by the Court in Division in the Resolution dated December 19, 2009, to wit:
>
> Section 1 of R.A. No. 9480 provides that the tax amnesty covers all national internal revenue taxes for taxable year 2005 and prior years, with or without assessments, that have remained unpaid as of December 31, 2005. **Clearly, the availment of the said tax amnesty does not necessarily mean that a taxpayer admits the validity of any prior assessments and waivers, as argued by respondent; since the tax amnesty covers even those without any assessment. The law does not impose such conditions, save for the taxpayer to satisfy all the qualification requirements.** (*Boldfacing supplied*)
>
> In addition, with the findings that the waivers were null and void which consequently failed to extend the period within which the CIR may assess PMC for any deficiency taxes, the assessment issued therefor was made outside of the prescribed period and is thus, void. Therefore, **PMC's availment of the tax amnesty program would fall under those without any assessments required**." (Emphasis supplied)

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[26](*RCBC* case), the Supreme Court held that:

> "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

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[25] CTA EB No. 578, June 28, 2010.
[26] G.R. No. 170257, September 7, 2011.

> which it had previously recognized would run counter to the principle of equity which this institution holds dear." *(Emphasis supplied)*

The *RCBC* Case, however, is not on all fours with the instant case. Respondent never made any partial payment on the questioned assessments.

Petitioner likewise insists that the period of limitation provided in Section 203 of the NIRC of 1997, as amended, finds no application to withholding tax as the same is not an internal revenue tax but is only a system to collect tax.

We agree with the ruling of the Court in Division that petitioner's above contention is devoid of merit. Quoted hereunder is the relevant portion of the assailed decision:

> "xxx Section 21 of the NIRC of 1997, as amended, provides:
>
> "SEC. 21. Sources of Revenue. — The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue."
>
> Withholding taxes are taxes withheld from income payments by withholding agents, which is clearly mandated under the NIRC and collected by the BIR. In this case, respondent allegedly found deficiency EWT and FWT from income payments made by petitioner pursuant to Sections 57 and 28 of the NIRC of 1997, as amended, respectively. It is clear, therefore, that the alleged deficiency EWT and FWT are covered by the period of limitation of assessment and collection under Section 203 of the NIRC of 1997, as amended."

Moreover, in a number of cases[27], the Supreme Court has uniformly applied Section 203 of the NIRC of 1997, as amended, to withholding tax assessments.

Finding no reversible error, *We* affirm the assailed *Decision* dated September 18, 2012 and *Resolution* dated November 19, 2012 of the former Third Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[27] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 162852, December 16, 2004); *Commissioner of Internal Revenue vs. FMF Development Corporation* (G.R. No. 167765, June 30, 2008); *Commissioner of Internal Revenue vs. Kudos Metal Corporation* (G.R. No. 178087, May 5, 2010).

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice