REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1729 (CTA CASE No. 8972)
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR. UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, *JJ.*
2100 CUSTOMS BROKERS, INC., Respondent.	Promulgated:
	JAN 15 2019 10:25 a.m.

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review dated October 12, 2017 filed by the Commissioner of Internal Revenue (CIR) assailing the Resolution promulgated by the Court in Division on February 22, 2017 which cancelled the assessment for deficiency Value-Added Tax (VAT) and withholding tax on compensation (WTC) issued against respondent 2100 Customs Brokers, Inc., on the ground that it was issued beyond the period prescribed under the law.

Similarly assailed is the Resolution dated September 20, 2017 which denied for lack of merit petitioner's Motion for Reconsideration, effectively affirming the Resolution of February 22, 2017.

The following facts are undisputed.

On September 12, 2008, Officer-in-Charge (OIC)-Regional Director (RD) Ma. Nieva A. Guerrero issued a Letter of Authority (LOA) authorizing Revenue Officer (RO) Ricaredo Balderas and Group Supervisor Helen H. Leano of Revenue District Office (RDO) No. 052-Parañaque City to examine and investigate the books of account and other accounting records of respondent for all internal revenue taxes covering the fiscal year ending March 31, 2007.

On December 15, 2009, respondent executed the First Waiver extending petitioner's period to assess until December 31, 2010.

On September 29, 2010, respondent received a Preliminary Assessment Notice (PAN) dated September 20, 2010 issued by Regional Director (RD) Jaime B. Santiago assessing it for alleged deficiency income tax (IT), VAT, and WTC in the total amount of P57,640,481.92, inclusive of interest and penalties.

On October 12, 2010, respondent, in its Reply, contested the PAN.

On November 15, 2010, petitioner, through RD Jaime B. Santiago, issued a Formal Assessment Notice (FAN) demanding the payment of the total amount of P58,696,994.88, representing deficiency IT, VAT, and WTC inclusive of interest and penalties for the fiscal year ending March 31, 2007.

On November 18, 2010, respondent signed and submitted a Second Waiver to extend petitioner's period to assess until June 30, 2011.

On December 14, 2010, respondent filed a Written Protest dated December 5, 2010 against the FAN.

On July 13, 2011, petitioner, through RD Jaime B. Santiago, issued a Final Decision on Disputed Assessment (FDDA) demanding the payment of deficiency IT, VAT, and

WTC in the sum of P63,045,400.69, inclusive of interest and penalties.

On August 18, 2011, respondent filed an Appeal dated August 16, 2011 assailing the adverse ruling in the FDDA.

On December 18, 2014, respondent received the Decision dated December 5, 2014 denying its appeal and upheld the findings of deficiency taxes as stated in the FDDA.

Aggrieved, respondent elevated the matter through a Petition for Review to the Court in Division on January 20, 2015, to which petitioner filed Answer through registered mail on March 13, 2015.

On August 3, 2015, respondent filed an Omnibus Motion praying to hear the issue of prescription first before hearing the case on the merits. The Court in Division granted the motion and allowed the parties to adduce their respective evidence on the incident.

In the assailed Resolution dated February 22, 2017, the Court in Division granted respondent's Omnibus Motion in this wise:

> WHEREFORE, premises considered, (respondent's) Omnibus Motion is GRANTED. Accordingly, the assessment for (respondent's) deficiency VAT and deficiency withholding tax on compensation for fiscal period ending March 31, 2007 is CANCELLED for having been issued beyond the prescriptive period.
>
> SO ORDERED.

The Court in Division ruled that since the subject assessment was issued against respondent beyond the prescriptive period, it was void and without any legal consequence. The Court in Division explained that although respondent executed two (2) waivers of the defense of prescription, the said waivers did not extend petitioner's

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period to assess as they were not compliant with the mandatory requisites for their validity as prescribed under the pertinent regulations and jurisprudence.

The foregoing Resolution was affirmed when the Court in Division denied for lack of merit petitioner's Motion for Reconsideration in the equally assailed Resolution of September 20, 2017.

Unconvinced, petitioner filed his appeal with the Court *En Banc* via a Petition for Review on October 13, 2017.[1]

Petitioner insists that the subject assessment was issued within the reglementary period, hence, valid. Respondent executed two (2) waivers of the defense of prescription on December 15, 2009 extending his period to assess until December 31, 2010. This was followed by another waiver on November 18, 2010, giving him until June 31, 2011 to issue an assessment. Therefore, the FAN was timely issued on November 15, 2010, or before the extended period lapsed. In other words, the assessment issued against respondent has not prescribed, contrary to respondent's claim.

According to petitioner, the two waivers were both compliant with the prescribed form under Revenue Memorandum Order (RMO) No. 20-90. The two waivers were executed in three (3) copies, dated and signed by respondent's authorized representative and duly accepted by petitioner, through RDO Wilferdo Z. Narnola. They also specified the period within which petitioner could assess respondent. They were accepted before the expiration of the periods to assess. Finally, they were received by respondent as indicated in the original of the notarized waiver attached to the BIR case docket.

Respondent counters that the validity of the two waivers as an issue is not new. It has been determined and settled in the assailed Resolution of February 22, 2017 which emphasized the infirmity of the two (2) waivers allowing the assessment period to prescribe.

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[1] Through registered mail, received on October 23, 2017.

Further, the doctrines of estoppel and *in pari delicto* do not apply in cases involving execution of waivers of the defense of prescription since such prescriptive period is meant to protect the taxpayer from prolonged and unscrupulous tax investigations and audits by respondent. Precisely, extensions of the period to assess through waivers of the statute of limitations are strictly construed, thus, they must be compliant with the all the requisites under the pertinent regulations and jurisprudence.

Respondent further states that petitioner cannot shift the blame on it for any defect in the waivers to render the same invalid. Neither can he seek refuge behind the doctrine of estoppel to conceal his failure to comply with the pertinent regulations on the execution of waivers which his own office issued. Petitioner should have required it to submit a written authorization of its signatory before accepting the waivers, but failed.

Finally, it was incredible for petitioner, through RDO Wilfredo Z. Narnola, to have accepted the first waiver on December 15, 2009, as the copy thereof was signed by respondent's representative and forwarded to petitioner's office only on December 17, 2009.

THE RULING OF THE COURT

Under Section 203 of the 1997 National Internal Revenue Code (*NIRC*), as amended, respondent has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes,[2] thus:

> 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,*

[2] Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc., G.R. No. 202695, February 29, 2016.

> 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.

The instant case covers the fiscal year from April 2006 to March 31, 2007. Pursuant to Section 203 of the NIRC, as amended, the last day/s to assess respondent for VAT, were as follows:

For VAT (fiscal year ending March 31, 2007)

Period Covered	**Date Filed**[3]	**Last Day to File Return**[4]	**Last Day to Assess**
1st Quarter (April-June 2006)	July 24, 2006	July 25, 2006	July 27, 2009
2nd Quarter (July-September 2006)	October 25, 2006	October 25, 2006	October 26, 2009
3rd Quarter (October-December 2006)	January 19, 2007	January 25, 2007	January 25, 2010
4th Quarter (January-March 2007)	April 26, 2007	April 25, 2007	April 26, 2010

Thus, the latest date to issue a VAT assessment for the fiscal year ending March 31, 2007 was on April 26, 2010. Obviously, the subject FAN was issued beyond the three-year prescriptive period on November 15, 2010.

As for WTC, the last day/s to assess are as follows:

Period Covered	**Date Filed**[5]	**Last Day to File Return**[6]	**Last Day to Assess**
April 2006	May 11, 2006	May 15, 2006	May 15, 2009
May 2006	June 9, 2006	June 15, 2006	June 15, 2009
June 2006	July 10, 2006	July 15, 2006	July 15, 2009
July 2006	August 9, 2006	August 15, 2006	August 17, 2009

[3] Exhibits P-8, P-9, P-10, and P-11.
[4] Based on Section 114(A) of the 1997 NIRC requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.
[5] Exhibits P-12-A to P-12-L.
[6] Revenue Regulations No. 26-02 provides that a return must be filed on or before the fifteenth (15th) day of month following the month withholding was made.

August 2006	September 11, 2006	September 15, 2006	September 15, 2009
September 2006	October 10, 2006	October 15, 2006	October 15, 2009
October 2006	November 9, 2006	November 15, 2006	November 16, 2009
November 2006	December 8, 2006	December 15, 2006	December 15, 2009
December 2006	January 12, 2007	January 15, 2007	January 15, 2010
January 2007	February 8, 2007	February 15, 2007	February 15, 2010
February 2007	March 12, 2007	March 15, 2007	March 15, 2010
March 2007	April 10, 2007	April 15, 2007	April 15, 2010

In fine, the last day to assess WTC for the fiscal year ending March 31, 2007 was on April 15, 2010. Hence, the FAN was as well issued beyond the three 3-year prescriptive period on November 15, 2010.

Section 203 of the NIRC of 1997, as amended, limits the period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Thus, assessments issued after the expiration of such period are no longer valid and effective. x x x. As explained by the Court, the primary reason behind the prescriptive period on petitioner's right to assess or collect internal revenue taxes: that is, 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 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 a reasonable period of time.[7]

Again it appears that petitioner relies solely on the waivers of the defense of prescription executed by the parties for the validity of the FAN issued on November 15, 2010. But Section 203 of the NIRC, limits the period to assess to only three years, subject to the exceptions

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[7] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.

provided under Section 222 of the NIRC.[8] As a general rule, petitioner has three (3) years to assess taxpayers from the filing of the return. x x x An exception to the rule of prescription is found in Section 222(b) and (d) of this Code x x x. Thus, the period to assess and collect taxes may be extended upon written agreement executed by petitioner and the taxpayer concerned before the expiration of the three (3)-year period.[9]

Section 222(b) of the NIRC, as amended, pertinently provides, as follows:

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

Corollarily, RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the road map 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

[8] Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc., G.R. No. 213943, March 22, 2017.
[9] Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc., G.R. No. 227544, November 22, 2017.

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.[10]

In one case, the Supreme Court categorically ruled that a waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90 was recognized by the BIR itself in its subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012.[11]

Following RMO No. 20-90 and established jurisprudence, the first waiver executed by respondent was void for lack of notarized written authority of its representative to sign it.

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[10] Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010.
[11] Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014.

It bears stressing that a waiver is not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension.[12]

It was therefore incumbent upon petitioner, as the Head of the office that issued RMO No. 20-90, to take up the cudgels and check to verify if such waivers were compliant with the legal requirements for their validity under RMO No. 20-90 and that all supporting documents were attached thereto, including the written authority of respondent's representative to sign the waivers in behalf of respondent before accepting them. Obviously, petitioner utterly failed in this regard.

The [Supreme] 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. 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.[13]

Unrebutted evidence also show that respondent was not furnished with a copy of the First Waiver after it was signed and accepted by petitioner.[14] The record reveals that the First Waiver signed and accepted by petitioner was served and received by a certain Mario C. Enriquez,[15] who was not under the employ of respondent per Certificate[16] dated May 20, 2015, but of Airfreight 2100, Inc., an affiliate company of respondent.[17]

The First Waiver cannot also be considered to have been validly accepted by petitioner, or any of his duly authorized representatives.

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[12] Commissioner of Internal Revenue vs. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014.
[13] Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc., G.R. No. 213943, March 22, 2017.
[14] See Answer No. 33, page 8 of the Judicial Affidavit of Mr. Ariel J. Agcaoili dated May 22, 2015, Division docket volume III, p. 1223.
[15] Exhibit R-4.
[16] Exhibit P-29.
[17] See p. 8 of the Judicial Affidavit dated May 22, 2015, docket Volume III p. 1480.

It appears that the First Waiver was executed by respondent on December 15, 2009[18], and it was transmitted to the BIR two days thereafter, or on December 17, 2009, as evidenced by the stamp "Received" by BIR Region No. 8 Makati.[19] It is therefore incredible for petitioner to have accepted the said First Waiver on December 15, 2009 as it was forwarded to his office only on December 17, 2009.

Interestingly, petitioner actively participated in the proceedings but failed to present evidence to rebut or refute the evidence adduced by respondent. In the absence of evidence to the contrary, the Court must give credence and weight to the facts as established by the evidence. Elementary is the rule that judgments must be based on the evidence presented before the court.[20]

Further, tax laws are civil in nature.[21] "[I]n the course of trial, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favor of plaintiff." x x x In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense.[22] In this case however, petitioner failed.

In view that the First Waiver is void, the 3-year prescriptive period to assess in this case, which was until April 26, 2010 at the latest for VAT, and until April 15, 2010 at the latest for WTC, had already lapsed. Consequently, the FAN issued beyond the 3-year prescriptive period on November 15, 2010 is likewise void.

With the foregoing, a discussion on the validity of the Second Waiver is futile.

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[18] Exhibit R-4.
[19] Exhibit P-14.
[20] Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines, G.R. No. 192718, February 18, 2015.
[21] Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006; Reyes vs. Commissioner of Internal Revenue, G.R. No. 163581.
[22] Manolito De Leon and Lourdes E. De Leon vs. Bank of the Philippine Islands, G.R. No. 184565, November 20, 2013.

On the principle of estoppel and *in pari delicto,* the doctrine has been defined by jurisprudence as follows:

> x x this Court recognized the doctrine of estoppel and upheld the waivers when both the taxpayer and the Bureau of Internal Revenue were *in pari delicto.* The taxpayer's act of impugning its waivers after benefitting from them was considered an act of bad faith x x x.
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> Parenthetically, this Court stated that when both parties continued to deal with each other in spite of knowing and without rectifying the defects of the waivers, their 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."[23]

The said doctrine of estoppel however cannot be applied 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. 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 had issued. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot simply shift the blame to the taxpayer.[24]

Note that the infirmity in the First Waiver arose from petitioner's inadvertence if not negligence in accepting the First Waiver allegedly on December 15, 2009, without verifying the authority of the person who executed it in behalf of respondent. It is also incredible that petitioner accepted the First Waiver on December 15, 2009[25] as it was only forwarded to his office on December 17, 2009 as shown in copy bearing the stamp "Received" by BIR Region No. 8 Makati.[26] All these rendered the assessment issued by petitioner against respondent void and without any legal consequence.

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[23] Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc., G.R. No. 227544, November 22, 2017.
[24] Commissioner of Internal Revenue vs. Systems Technology Institute, Inc., G.R. No. 220835, July 26, 2017.
[25] Exhibit R-4.
[26] Exhibit P-14.

On a final note, while the income liability was part of the FAN [27] issued on November 15, 2010, it was not discussed in the assailed Resolutions nor in the pleadings filed by the parties. In any event, the record has it that respondent's Annual Income Tax Return for fiscal year ending March 31, 2007 was filed on June 30, 2007.[28] Counting from said date pursuant to Section 203 of the NIRC, as amended, petitioner had 3 years or until June 30, 2010 to issue an assessment. Hence, the FAN was issued beyond the 3-year prescriptive period on November 15, 2010, hence, the assessment for income tax must likewise be declared void.

WHEREFORE, the Petition for Review dated October 12, 2017 filed by the Commissioner of Internal Revenue is **DENIED,** for lack of merit.

Consequently, the assailed Resolution dated February 22, 2017 and Resolution dated September 20, 2017, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

[27] Exhibit P-17, docket Volume IV pp. 1765-1766.
[28] Exhibit P-5, docket Volume IV pp. 1706-1708.

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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioners,

CTA EB NO. 1729
(CTA Case No. 8972)

-versus-

Present:

DEL ROSARIO, *P.J.*,
CASTANEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

2100 CUSTOMS BROKERS, INC.,
Respondent,

Promulgated:
JAN 15 2019
10:25 a.m.

x--x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Esperanza R. Fabon-Victorino, which denies the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

In denying the CIR's Petition for Review, the *ponencia* found that the Final Assessment Notice (FAN) dated November 15, 2010 was void for having been issued beyond the original three (3)-year prescriptive period to assess respondent 2100 Customs Brokers, Inc. (CBI) for deficiency Income Tax, Value-Added Tax (VAT) and Withholding Tax on Compensation. The *ponencia* ruled that the First

Waiver executed by respondent (CBI) was void, hence, the same could not have extended the three (3)-year prescriptive period to assess respondent for the aforesaid deficiency taxes up to December 31, 2010. The First Waiver was invalidated for the following reasons:

(i) lack of the notarized written authority of respondent CBI's representative to sign it;

(ii) failure of petitioner CIR to furnish respondent CBI with a copy of the First Waiver after it was signed and accepted by petitioner CIR (the person who received the First Waiver was not under the employ of respondent CBI); and,

(iii) the First Waiver was transmitted by respondent CBI to petitioner CIR only on December 17, 2009, hence, it was incredible for petitioner CIR to have accepted the First Waiver on December 15, 2009.

Records show that the First Waiver was signed by Mr. Ariel J. Agcaoli, respondent CBI's Director of Finance (then Comptroller). Being a responsible official of CBI, Mr. Agcaoli has the inherent authority to sign the First Waiver. Under Revenue Memorandum Order (RMO) No. 20-90, if the taxpayer issuing a waiver is a corporation, the waiver may be signed by any of its responsible officials. A notarized Board Resolution is necessary only when the authority is delegated to a representative who is not a responsible official of the corporation. Even assuming that a notarized written authority was indeed required, the responsibility for its preparation did not pertain to petitioner CIR but to respondent CBI.

Anent the date of acceptance by petitioner CIR, a perusal of the First Waiver reveals that it was accepted by petitioner CIR on December 15, 2009, albeit there was a stamp indicating that it was received by BIR Region No. 8 Makati only on December 17, 2009. To my mind, whether the First Waiver was accepted on December 15, 2009 or December 17, 2009 is irrelevant as both dates are well within the original three (3)-year period. Hence, whether or not the First Waiver was accepted by petitioner CIR on December 15, 2009 or December 17, 2009, the First Waiver was accepted before the expiration of the original three (3)-year period to assess. Moreover, as a notarial document, the First Waiver was guaranteed by public attestation in accordance with the law, hence, it must be sustained in full force and effect so long as the one who impugns it does not present *strong, complete, and conclusive proof* of its falsity or nullity on account of some flaw or defect provided against by law.[1]

While petitioner CIR's failure to furnish respondent CBI with a copy of the signed and accepted First Waiver could have invalidated the same, respondent CBI's subsequent act of executing the Second Waiver shows its implied admission of the validity of the First Waiver. Respondent CBI never raised the invalidity of the First Waiver at the earliest opportunity, either in its Reply to the Preliminary Assessment Notice (PAN), Protest to the FAN, and Appeal of the Final Decision on Disputed Assessment. Respondent CBI thereby impliedly recognized the validity of the First Waiver. Respondent CBI only raised the issue of the Waivers' invalidity in its Petition for Review filed with this Court.

It cannot be denied that as a consequence of the issuance of the First Waiver, petitioner CIR delayed the issuance of the FAN. In the ***Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.***,[2] the Supreme Court ruled that the doctrine of estoppel applies against a taxpayer who did not only raise at the earliest possible opportunity its representative's lack of authority to execute two (2) waivers of defense of prescription, but was also accorded, through said waivers, more time to comply with the audit requirements of the BIR.

Also, in the more recent case of ***Asian Transmission Corporation vs. Commissioner of Internal Revenue***,[3] the Supreme Court reiterated the applicability of the principle of estoppel and emphasized that a taxpayer who has benefitted from the defective waivers should not be allowed to assail them, *viz.*:

> "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 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

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[1] Carandang vs. Capuno, G.R. No. L-55373, July 25, 1983, citing Chiliianchin vs. Coquinco, 84 Phil. 714.
[2] G.R. No. 227544, November 22, 2017.
[3] G.R. No. 230861, September 19, 2018.

> 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.** Indeed, the Court observed *in Commissioner of Internal Revenue v. Next Mobile Inc.* that:
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>> In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. **Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.**" (Boldfacing supplied)

The applicability of ***Transitions Optical*** and ***Asian Transmission*** to the present case cannot be any clearer. There should be no reason for the Court to invalidate the First Waiver; considering that the FAN was issued within the extended period provided in the First Waiver, the same is valid.

All told, I VOTE to: (i) GRANT the Petition for Review filed by the Commissioner of Internal Revenue; and (ii) REMAND the case to the Court in Division for further proceedings and eventually, for the determination of the amount of respondent 2100 Customs Brokers, Inc.'s liability for deficiency Income Tax, Value-Added Tax and Withholding Tax on Compensation for the fiscal year ending March 31, 2007.

ROMAN G. DEL ROSARIO
Presiding Justice