REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2904** (CTA Case No. 9317)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES** *JJ.*
THE LANDMARK CORPORATION, Respondent.	Promulgated: FEB 23 2026 4:30 pm

x - x

DECISION

FERRER-FLORES, J.:

At bar is a **Petition for Review**[1] filed by the **Commissioner of Internal Revenue (CIR)** assailing the Decision dated September 14, 2023[2] (assailed Decision) and Resolution dated March 25, 2024[3] (assailed Resolution) of the Court's Special Third Division[4] (Court in Division) in the case entitled *The Landmark Corporation vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 9317. The dispositive portions of the assailed Decision and Resolution read as follows:

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1 *Rollo*, pp. 7-27.
2 *Id.* at 34-60.
3 *Id.* at 62-75.
4 Penned by then Associate Justice Ma. Belen M. Ringpis-Liban (now Presiding Justice), and concurred in by Associate Justice Maria Rowena Modesto-San Pedro.

Assailed Decision

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The FLD dated July 22, 2015, and the FDDA dated March 1, 2016, both issued against petitioner, for deficiency income, VAT, EWT, DST, and IAET, and deficiency interests and penalties, in the aggregate amount of ₱583,998,287.78 for taxable year 2011, are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration [re: Decision dated 14 September 2023] is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the duly appointed **CIR**, the government agency tasked, among others, to collect all national internal revenue taxes, and has the power to decide disputed assessments and other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws administered by the BIR.

Respondent, **The Landmark Corporation**, on the other hand, is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at Ayala Center, Makati Avenue, Makati City.

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the Division Decision are as follows:[5]

> On April 1, 2013, [petitioner] issued *Letter of Authority* (LOA) No. 116-2013-00000095, authorizing the examination of [respondent's] books of account and other accounting records for all internal revenue taxes for taxable year 2011.
>
> On July 10, 2014, [respondent], through its Assistant to the Executive Vice President (EVP), Ms. Conchita V. Lee, executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*, wherein [respondent] waived the said defense, and consented to the assessment and/or collections of tax or taxes

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5 *Rollo*, pp. 35-41.

for 2011 which may be found due after investigation/reinvestigation/re-evaluation, at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the NIRC, but not later than December 31, 2015. The said *Waiver* was accepted by [petitioner] on July 25, 2014.

On June 23, 2015, [petitioner] issued a *Preliminary Assessment Notice* (PAN) with the *Details of Discrepancies*, informing [respondent] of its alleged deficiency income tax, VAT, EWT, DST, and IAET, based on third-party information for the taxable year 2011.

Thereafter, on July 3, 2015, the BIR Large Taxpayers Regular Audit Division received [respondent's] letter dated July 2, 2015, stating its objections to the PAN dated June 23, 2015.

On July 22, 2015, [respondent] received the *Formal Letter of Demand* (FLD) of even date issued by [petitioner], with the *Details of Discrepancies* and the corresponding *Audit Results/Assessment Notices*, informing [respondent] of its alleged deficiency income tax, VAT, EWT, DST, and IAET, based on third-party information for the taxable year 2011.

The BIR Large Taxpayers Service then received [respondent's] protest letter dated August 18, 2015 on August 20, 2015.

Subsequently, on September 30, 2015, the BIR Large Taxpayers Service received [respondent's] letter dated September 29, 2015, submitting additional documents in support of its protest.

On October 19, 2015, the BIR Large Taxpayers Service and Large Taxpayers Regular Audit Division received [respondent's] letter dated October 16, 2015, submitting additional documents in support of its protest.

On March 1, 2016, [respondent] received the assailed FDDA issued by [petitioner], assessing [respondent] of its alleged deficiency income tax, VAT, EWT, DST, and IAET, for the taxable year 2011. In the *Details of Discrepancies* attached to the FDDA, [petitioner] conceded an adjustment to the *"Undeclared Income per E-sales Validation vs. Reported in ITR"* and reduced the assessment from P48,727,079.25 to P48,414,515.72. [Petitioner] further cancelled the assessment on *"Unaccounted Exempt Sale"* in the total amount of P146,306,077.59. With the said FDDA, the BIR also issued the corresponding *Audit Results/Assessment Notices* bearing the same date.

[Respondent] filed the present *Petition for Review* on March 29, 2016.

On May 17, 2016, [respondent] filed an *Extremely Urgent Motion for Suspension of Collection of Taxes*. [Petitioner] then filed his *Comment/Opposition (Re. Petitioner's Extremely Urgent Motion for Suspension of Collection of Taxes dated 17 May 2016)* on June 1, 2016. [Respondent] filed its *Reply (Re: Respondent's Comment/Opposition dated 01 June 2016)* on June 9, 2016.

At the hearing held for the *Extremely Urgent Motion for Suspension of Collection of Taxes* of [respondent] on May 30, 2016, the latter presented the testimony of its Accounting Comptroller, Ms. Flordeliza J. Soriano.

[Respondent] filed its *Formal Offer of Documentary Evidence* in relation to [respondent's] *Extremely Urgent Motion for Suspension of Collection of Taxes* on May 31, 2016.

On June 2, 2016, [petitioner] filed a *Motion for Extension of Time to File Answer*.

In the Resolution dated June 20, 2016, the Court: (1) noted the filing of [petitioner's] *Comment/Opposition (Re: Petitioner's Extremely Urgent Motion for Suspension of Collection of Taxes dated 17 May 2016)*; (2) gave [petitioner] fifteen (15) days from notice to file his comment on [respondent's] *Formal Offer of Evidence*; and (3) granted [petitioner's] *Motion for Extension of Time to File Answer*, by giving the latter a final and non-extendible period of thirty (30) days from June 3, 2016 or until July 3, 2016, within which to file his *Answer* on [respondent's] *Petition for Review*.

On June 30, 2016, [petitioner] filed his *Comment [Re: Petitioner's Formal Offer of Documentary Evidence dated 31 May 2016]*.

[Petitioner] then filed another *Urgent Motion for Extension of Time to File Answer* on July 1, 2016. In the Resolution dated July 20, 2016, the court granted [petitioner] a final and non-extendible period of fifteen (15) days from July 3, 2016 or until July 18, 2016, within which to file his *Answer*.

On July 18, 2016, [petitioner] eventually filed his *Answer (to the Petition for Review dated 29 March 2016)*.

In the Resolution dated August 3, 2016, the Court resolved the *Formal Offer of Documentary Evidence* of [respondent] by admitting all its exhibits, and granting [respondent's] *Extremely Urgent Motion for Suspension of Collection of Taxes*, subject to the condition that [respondent] files a surety bond.

[Petitioner] transmitted the *BIR Records* of the present case [consisting of nine (9) folders] on October 14, 2016.

The Pre-Trial Conference was set and held on October 25, 2016. Prior thereto, *[Petitioner's] Pre-Trial Brief* was submitted on October 14, 2016, while [respondent's] *Pre-Trial Brief* was filed on October 20, 2016.

On November 24, 2016, the parties filed their *Joint Stipulation of Facts and Issues*. The Pre-Trial Order dated January 6, 2017 was then subsequently issued by the Court, thereby deeming the termination of the Pre-Trial Conference.

On January 31, 2017, [respondent] filed a *Motion for Preferential Resolution of the Issue on Prescription*, praying that it be allowed to present its evidence on the issue of prescription and for the Court to rule on the said issue ahead of the reception of evidence and resolution of all other issues in this case. [Petitioner] filed his *Comment/Opposition [Re: Petitioner's Motion for Preferential Resolution of the Issue on Prescription dated 31 January 2017]* on February 23, 2017. In the Resolution dated March 21, 2017, the Court granted [respondent's] *Motion for Preferential Resolution of the Issue on Prescription*.

In the meantime, [respondent] offered the testimonies of the following individuals, namely: (1) Ms. Brigitte Y. Francisco Chan, Corporate Secretary of [respondent]; and (2) Ms. Flordeliza J. Soriano, [respondent's] Accounting Comptroller.

[Respondent] filed its *Formal Offer of Documentary Evidence (On the Issue of Prescription)* on June 6, 2017; while [petitioner] submitted his *Opposition (Re: Petitioner's Formal Offer of Evidence dated 06 June 2017)* on June 21, 2017. In the Resolution dated July 25, 2017, the Court admitted all of [respondent's] offered evidence.

At the hearing held for *Motion for Preferential Resolution of the Issue on Prescription* of [respondent], [petitioner] presented the testimony of his lone witness, Revenue Officer (RO) Rosario A. Arriola.

Subsequently, [petitioner] filed his *Formal Offer of Evidence* on August 22, 2018. [Respondent] filed its *Objections to Respondent's Formal Offer of Evidence* on September 14, 2018. The Court then admitted [petitioner's] offered exhibits, in its Resolution dated December 18, 2018.

[Respondent's] *Memorandum (on the Issue of Prescription)* was submitted on January 30, 2019, while [petitioner's] *Memorandum* was filed on February 8, 2019.

Noting that there were several other factual matters that were inexorably intertwined with the other issues of the parties that necessitate a full-blown trial, the Court, in its Resolution dated June 25, 2019, held in abeyance the resolution on *Preferential Resolution of the Issue on Prescription*, and deemed it proper to resolve the same together with the other issues comprising the entirety of the case, and set the presentation of [respondent's] evidence as regards deficiency assessments for DST, IAET, and compromise penalties, all for taxable year 2011, on August 20, 2019.

On July 22, 2019, [respondent] posted a *Motion for Partial Reconsideration (Re: Resolution dated 25 June 2019)*, praying for the Court to partially reconsider its Resolution dated June 25, 2019, by allowing [respondent] to also present evidence on the deficiency assessments for income tax, VAT, EWT, and interests for taxable year 2011. No comment was submitted by [petitioner] on [respondent's] *Motion for Partial Reconsideration.* In the Resolution dated November 20, 2019, the Court denied the same.

During the hearing held on March 10, 2021, [respondent] offered the testimonies of: (1) Atty. Juan R. Bernardino, Jr., in-house counsel of [respondent]; and (2) Ms. Brigitte Y. Francisco Chan, Corporate Secretary of [respondent].

[Respondent] then filed, through electronic mail, its *Formal Offer of Documentary Evidence (On the Issue of Deficiency Documentary Stamp Tax, Improperly Accumulated Earnings Tax, Interests, and Compromise Penalties)*, on May 20, 2020. [Petitioner] posted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on June 16, 2020. In the Resolution dated August 26, 2020, the Court admitted [respondent's]offered evidence.

On March 17, 2021, [petitioner] recalled to the witness stand its lone witness, RO Rosario Arriola.

In the Resolution dated October 11, 2021, the Court stated that during the hearing held on March 17, 2021, it granted [petitioner] until March 29, 2021 to file his *Formal Offer of Evidence*, but it failed to do so. Thus, [petitioner's] right to present his evidence was deemed waived, and both parties were given a period of thirty (30) days from notice to file their respective memoranda.

[Petitioner] then filed an *Omnibus Motion (1. For Reconsideration Re: Resolution dated 11 October 2021; 2. To Admit Attached Formal Offer of Evidence; and 3. To Hold in Abeyance Submission of Memorandum)* filed on June 26, 2021. [Respondent] correspondingly filed its *Comment (Re: Omnibus Motion dated 25 November 2021)* on February 28, 2022. In the Resolution dated April 19, 2022, the Court: (i) granted [petitioner] *Omnibus Motion*; (ii) admitted the attached [petitioner's] *Formal Offer of Evidence*; and (iii) gave [respondent] a period of ten (10) days from notice to file its comment to [petitioner's] *Formal Offer of Evidence*.

On May 20, 2022, [respondent] filed its *Objections to Respondent's Formal Offer of Evidence (On the Issues of Documentary Stamp Tax, Improperly Accumulated Earnings Tax, Interests, Compromise Penalty)*. In the Resolution dated July 21, 2022, the Court admitted all of [petitioner's] documentary evidence.

Thereafter, on September 12, 2022, [petitioner] posted a *Manifestation*, stating that he is adopting the arguments he raised in his *Answer* dated July 15, 2016 as his *Memorandum*.

On October 10, 2022, [respondent] filed its *Memorandum*.

The present case was submitted for decision on October 13, 2022.

The Court in Division ruled that the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (Waiver) is void, thus, did not validly extend the three-year prescriptive period to assess income tax, VAT, and EWT. The assessments for documentary stamp tax (DST) and improperly accumulated earnings tax (IAET), however, have not prescribed considering that no return was filed thereon. Ultimately, the Court in Division ruled that the Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) are void for failure of the FLD to indicate the due date. The assessment for taxable year (TY) 2011 was, therefore, cancelled and set aside.

Petitioner's *Motion for Reconsideration* before the Court in Division was denied for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Aggrieved, petitioner filed a *Motion for Extension of Time to File Petition for Review* on April 12, 2024,[6] which the Court granted in its Minute Resolution,[7] thereby giving petitioner additional 15 days from April 18, 2024, or until May 3, 2024, within which to file a petition for review.

On May 3, 2024, within the extended period allowed by the Court, petitioner filed the present *Petition for Review*.

Respondent then filed on June 18, 2024 its *Comment (Re: Petition for Review dated 03 May 2024)*.[8] Thereafter, the Court referred the case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section 11 of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

The preliminary mediation conference was held on October 8, 2024. Correspondingly, the parties were allowed 30 days from said date, or until November 7, 2024, to reach a settlement.

On October 31, 2024, the PMC-CTA filed a *Request for Extension*,[9] signed by the Mediator, (Ret.) Justice Amelia R. Cotangco-Manalastas stating that the parties have signified their willingness to extend the said period, there being a good possibility that an amicable settlement will be reached. It was, thus, requested that the parties be granted a final extension of 30 days from November 7, 2024, or until December 7, 2024, to allow the parties additional time to reach an amicable settlement.

In the Minute Resolution dated November 7, 2024, the Court granted the *Request for Extension*.[10]

On December 10, 2024, the Court received the *Mediator's Report* filed by PMC-CTA stating that the mediation was unsuccessful.[11]

The Court noted the *Mediator's Report* and correspondingly submitted the instant case for decision.[12]

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6 *Rollo*, pp. 1-4.
7 Minute Resolution dated April 16, 2024, *Rollo*, p. 6.
8 *Rollo*, pp. 77-101.
9 *Rollo*, p.467.
10 *Id.* at 468.
11 *Id.* at 469.
12 Minute Resolution dated January 22, 2025, *Rollo*, p. 474.

ISSUES

Petitioner assigns the following errors in his *Petition for Review*:[13]

I. Whether or not the Honorable Court in Division erred in ruling that the waiver executed by respondent is not valid;

II. Whether or not the Honorable Court in Division erred when it ruled on an issue never raised by respondent, never joined by the pleadings, never raised during the Pre-Trial and never defined by the Court in the Pre-Trial Order;

III. Whether or not the Honorable Court in Division erred in its Decision by ruling that assessments issued by petitioner are void for failure to indicate due date for the payment of the assessed deficiency taxes.

PARTIES' ARGUMENTS

In support of its *Petition,* petitioner forwards the following arguments:

First, the waiver executed by respondent is valid and the right to assess respondent has not yet prescribed. Contrary to the finding of the Court in Division that the waiver is invalid for failing to indicate the nature and amount of tax due, petitioner argues that the execution of the waiver preceded the issuance of the Formal Letter of Demand (FLD). For petitioner, the nature and amount of tax due need not be specified upon execution of the waiver. Respondent, therefore, cannot claim incognizance of what its representative has executed, and that it is aware that the prescriptive period will be tolled relative to the 2011 tax investigation when it executed the waiver.

Second, his right to due process was violated. Petitioner contends that respondent only raised the issues on the validity of the waivers and factual and legal bases of the assessments in its petition for review. Respondent never prayed for the cancellation of the assessment on the ground that petitioner's assessments are void because it failed to state the due date for payment of tax.

Lastly, petitioner insists that the due date for payment of respondent's liability is indicated in the enclosed assessment notice attached in both the FLD and Final Decision on Disputed Assessment (FDDA). The due date indicated in the FLD is July 31, 2015; whereas, the due date indicated in the assessment notices attached to the FDDA is March 31, 2016. The issue on the lack of due date, therefore, is undisputed and cannot be raised for the first time on appeal.

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[13] *Rollo,* pp. 9-10.

In its *Comment*, respondent insists that there was no valid waiver of the defense of prescription under the statute of limitations which extended petitioner's right to assess it for deficiency taxes. The waiver executed failed to comply with Revenue Memorandum Order (RMO) No. 20-90[14] and Revenue Delegation Authority Order (RDAO) No. 05-01,[15] specifically with respect to the kind and amount of taxes to be assessed. Consequently, the three-year period to assess respondent had already prescribed. Moreover, the waiver was not executed by a responsible officer or duly authorized representative of respondent.

Further, respondent submits that the Court may rule upon related issues necessary to achieve the disposition of the case. For respondent, a holistic approach by the Court of the case before it, and consequently ruling on matters related to the issues submitted by the parties, is not an exercise in derogation of one party's rights, but an exercise of discretionary powers toward an orderly administration of justice.

RULING OF THE COURT *EN BANC*

After an assiduous review of the records and the parties' arguments, the Court finds the instant *Petition for Review* partly meritorious.

The Court En Banc has jurisdiction

Prior to discussing the merits, We shall first determine the Court *En Banc's* jurisdiction.

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

> Sec. 3. *Who may appeal; period to file petition.* –
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of he reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied) WM

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[14] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, April 4, 1990.

[15] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Stature of Limitations, August 2, 2001.

The CIR received the assailed Resolution denying its *Motion for Reconsideration* on April 3, 2024, while the Office of the Solicitor General (OSG) received the same on April 4, 2024. Counting 15 days from the receipt of the OSG, petitioner had until April 19, 2024 within which to appeal before this Court.

On April 12, 2024, the CIR filed a *Motion for Extension of Time To File Petition for Review.* In the Minute Resolution dated April 16, 2024, he was granted 15 days, or until May 3, 2024, within which to file a petition for review.

The CIR, thus, timely filed the instant *Petition for Review* on May 3, 2024.

The Court may rule upon related issues albeit not stipulated by the parties

At this juncture, the Court stresses that, in rendering a judgment, it can resolve an issue, albeit not raised by the parties. Section 1, Rule 14 of the RRCTA provides:

> SECTION 1. *Rendition of judgment.* — x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

In *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue*[16], the Supreme Court elucidated that the Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case, viz:

> For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case **matters of record** having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."
>
> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that the CTA may even consider issues not specifically

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16 G.R. No. 249153, September 12, 2022.

> raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.

Hence, the Court shall now proceed to tackle the merits of the case at bar.

The Waiver of the Defense of Prescription is void

The Court in Division correctly ruled that the waiver executed is void for failure to indicate the nature and amount of taxes due. Accordingly, the prescriptive period to assess respondent for deficiency taxes, particularly income tax, value-added tax (VAT) and expanded withholding tax (EWT), did not extend beyond the three-year period.

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

> SECTION 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.

Section 222 of the NIRC of 1997, as amended, provides exceptions to the three-year period to assess, to wit:

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

From the foregoing, the period to assess for deficiency taxes is three years, unless there is an agreement in writing extending the period, more commonly known as the Waiver.

For such Waiver to be valid, it must comply with RMO No. 20-90 and RDAO No. 05-01. The non-compliance with RMO No. 20-90 in this case became fatal to the Waiver.

In the recent case of *Commissioner of Internal Revenue vs. Telstar Manufacturing Corporation (Telstar),*[17] the Supreme Court affirmed its previous ruling in *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue,*[18] that when a waiver fails to comply with the requisites under RMO No. 20-90 and RDAO No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes, to wit:

> In the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*, this Court invalidated waivers that did not strictly comply with the provisions of Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01 such as, but not to:
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> 1) Failure to state the specific date within which the BIR may assess and collect revenue taxes;
> 2) Failure to sign by the CIR as mandated by law or by his duly authorized representative;
> 3) Failure to indicate the date of acceptance to determine whether the waiver was validly accepted before the expiration of the original three-year period;
> 4) Failure to furnish the taxpayer of a copy of the waiver;
> 5) Failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy;
> 6) Execution of the waivers without the written authority of the taxpayer's representative to sign the waiver on their behalf;
> 7) Absence of any proof that the taxpayer was furnished a copy of the waiver;
> 8) A waiver signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR;
> 9) **Failure to specify the kind and amount of tax due**; and
> 10) A waiver which refers to a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case.
>
> Generally, when a waiver fails to comply with the requisites under Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, the Court recognized exceptions to this general rule following the equitable principles of *in pari delicto* or "in equal fault" and *estoppel*. Thusly, the Court applied the doctrine of *estoppel* in cases where the taxpayer failed to raise the invalidity of the waivers at the earliest opportunity and where the taxpayer benefited from the waiver.
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> In the present case, CIR had until April 15, 2013 for income tax, January 25, 2013 for value-added tax, and January 28, 2013 for expanded

[17] *Commissioner of Internal Revenue vs. Telstar Manufacturing Corporation; Telstar Manufacturing Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 249239, 250286, and 249241-42, February 10, 2025.

[18] G.R. No. 202105, April 28, 2021.

> withholding tax, within which to assess Telstar for deficiency taxes covering taxable year 2009. If valid, the waivers would have effectively extended such period to June 30, 2013 for the *first waiver* and December 31, 2013 for the *second waiver.*
>
> This Court thus proceeds to test the waivers executed by Telstar through the prism of Revenue Memorandum Order No. 20-90, Revenue Delegation of Authority Order No. 05-01, and relevant jurisprudence. Upon scrutiny, the executed waivers suffer from several defects. *First*, the request made was for an extension of time within which to present additional documents, and not for the reinvestigation and/or reconsideration of the pending internal revenue case as required under Revenue Memorandum Order No. 20-90. *Second*, **the subject waivers failed to specify the kind and amount of taxes due. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. *Third*, the subject waivers were not signed by the Commissioner but by Assistant Commissioner Masajon, the officer-in-charge of the Large Taxpayers Service. The requirement in Revenue Memorandum Order No. 20-90 clearly specifies that it is the Commissioner who should sign for the BIR such waivers where the taxes exceed PHP1,000,000.00. (Emphasis supplied)

Petitioner's invocation of the doctrine of estoppel is of no moment. This Court echoes the Court in Division's finding that the peculiar circumstances in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)* (*Next Mobile)*[19] are not present here. Again, in *Telstar* the Supreme Court elucidated:

> At this juncture, it must be emphasized that there is nothing vague or difficult to understand about the procedural guidelines. CIR and the revenue officials knew fully well the drastic consequences of noncompliance with Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01 and yet, they utterly failed to faithfully follow these BIR issuances. Clearly, the BIR is not entitled to the mantle of protection accorded by the doctrine of estoppel. Having caused the defects in the waivers, the BIR must bear the consequence of its own negligence.

We, therefore, affirm the Court in Division's ruling that the subject Waiver is void. The assessment for deficiency income tax, VAT and EWT are barred by prescription.

The FLD and FDDA are valid

The Court in Division ruled that the FLD and FDDA are void for failure to indicate the due date for payment. Petitioner, however, claims otherwise. In the *Petition*, petitioner avers that the FLD indicated a due date of July 31,

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

2015; whereas, the FDDA provided March 31, 2016 as the due date for payment.

After a second hard look on the records, there is a due date indicated in the enclosed Assessment Notices in the FLD. The FLD reads:

> Please note that the amount of deficiency tax assessments is inclusive of interests and penalties and will be adjusted if not paid on the prescribed dates.
>
> xxx xxx xxx
>
> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities using the BIR Payment Form (BIR Form 0605) through EFPS **within the time shown in the enclosed assessment notice**. Afterwards, submit a copy thereof to our Office at Rm. 216, Regular Large Taxpayers Regular Audit Division I, BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein FLD if warranted. (Emphasis supplied)

A careful perusal of the Assessment Notices[20] provided July 31, 2015 as due date. The interest was also computed up to July 31, 2015.

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof. This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period".[21]

Here, the FLD contained a definite amount of tax due coupled with a demand to pay within a specific period. The adjustment of interest from the due date up to the time of actual payment did not make the amount indefinite.

There being no infirmity in the issuance of the FLD, the same is valid. Correspondingly, the FDDA is likewise valid.

Upon careful examination of the FLD, the assessments for documentary stamp tax (DST) and improperly accumulated earnings tax (IAET) are not yet barred by prescription. As found by the Court in Division, respondent did not file returns for DST and IAET, thus, triggering the 10-year prescriptive period pursuant to Section 222(a) of the NIRC of 1997, as amended.

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[20] Exhibits R-11, R-11-a, R-11-b, R-11-c, R-11-d, BIR Records Folder 9, pp. 612-616.

[21] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

Section 222(a) of the NIRC of 1997, as amended, provides:

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

The Court shall now inquire into the details of the DST and IAET assessments, broken down as follows:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
DST	₱ 163,092.23	-	₱ 136,818.75	₱16,000.00	₱ 315,910.98
IAET	₱11,661,512.33	₱2,915,378.08	₱9,910,688.01	₱50,000.00	₱25,537,578.43

The assessment for deficiency DST is upheld

In the FDDA, petitioner upheld the assessment for DST, albeit for a reduced amount of ₱315,910.98, for the rental expenses to Ayala Land amounting to ₱137,732,618.00 and future lease commitments amounting to ₱25,358,616.00.

Respondent argues that, with respect to rental expenses, it is Ayala Land that is liable to pay the DST since it was the recipient of the income. Anent the future lease commitments, respondent submits that the same are not actual expenses, but merely disclosures required for financial statement presentation purposes.

We are not persuaded.

Section 194 of the NIRC of 1997 provides:

> *SECTION 194. Stamp tax on leases and other hiring agreements.* - **On each lease**, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp of Three pesos (P3.00) for the first Two thousand pesos (P2,000.00), or fractional part thereof, and an additional One peso (P1.00) for every One thousand pesos (P1,000.00) or fractional part thereof in excess of the first two thousand pesos (P2,000.00) **for each year of the term of said contracts or agreement.** (Emphasis supplied)

Relevantly, Section 2 of Revenue Regulations (RR) No. 9-94 reads:

> *SECTION 2. Persons Liable.* - Upon documents, instruments, loan agreements, and papers and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, documentary stamp taxes for and in respect of the transaction so had or accomplished **shall be paid** as hereinafter prescribed by the **person making, signing, issuing, accepting, or transferring the same, wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines**, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the directly liable for the tax. (Emphasis supplied)

Respondent's contention that it is Ayala Land that should be liable is specious. The DST must be paid by the person making, signing, issuing, accepting or transferring the document for and in respect of the transaction. Nowhere in Section 2 above does it mention that the DST must be paid by the lessor as the income recipient. Respondent failed to convince this Court that the DST must be paid, or was paid, by Ayala Land by virtue of their agreement. Likewise, there is no showing that respondent is exempt from paying DST. Absent proof that it is not liable for the DST arising from the lease contract, petitioner's assessment stands.

Similarly, the DST assessment from future lease commitment is upheld. Section 194 requires the payment of DST for each year of the term of the contract. Upon perusal of respondent's Notes to its Audited Financial Statements, the future lease commitment pertains to the company's long-term lease agreement, which was renewed for 24 years, or until June 30, 2030, covering the parcel of land, where the Supermarket and Department Store are located. The assessed amount comprised of the aggregate future minimum annual rental payment based on fixed fee.

Section 4 of RR No. 9-94 provides the time and manner of payment of DST, to wit:

> *SECTION 4. Time and Manner of Payment of Documentary Stamp Tax.* - The documentary stamp tax shall be paid by the purchase and affixture of the documentary stamp(s) to the document or instrument taxed or to such other papers as may be indicated by law or regulations as the proper recipients of the stamp and by the subsequent cancellation of the documentary stamp which may be done by writing, stamping or perforating the date of the cancellation across the face of each stamp in such a manner that part of the writing, impression, or perforation shall be on the stamp itself and partly on the document to which the stamp is attached.
>
> If, however, the amount of the documentary stamp tax due on the taxable

> document is ten pesos (P10.00) or more, the **documentary stamp tax shall be paid by the taxpayer at the time the act is done or transaction had,** and instead of affixing actual documentary stamp on the face of the taxable document, the information shown on the evidence of payment of the documentary stamp tax due on the document, that is, the official receipt number of the evidence of payment, date of payment, amount paid, and the name of the payor, shall be written on the face of the document or on any suitable space in the document.

Respondent is, thus, liable for DST for each year of the term of the contract at the time of transaction.

Moreover, considering that respondent did not file a DST return as found by the Court in Division, it shall be subject to civil penalties and interest pursuant to Sections 248 and 249 of the NIRC of 1997, as follows:

> SECTION 248. *Civil Penalties.* –
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> (1) **Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed**; or
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment. (Emphasis supplied)
>
> xxx
>
> SECTION 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:
(1) The amount of the tax due on any return required to be filed, or
(2) The amount of the tax due for which no return is required, or
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

In relation thereto, effective January 1, 2018, the applicable rate for deficiency interest is now 12% pursuant to R.A. No. 10963,[22] as implemented by RR No. 21-2018.[23]

Hence, a civil penalty equivalent to 25% of the amount due shall be imposed on the taxpayer in case of failure to file any return and pay the tax due thereon as required under the provisions of the NIRC of 1997, as amended, or rules and regulations on the date prescribed. In addition, interest equivalent to 20%/12% shall likewise be imposed on the taxpayer who failed to pay the tax within the period prescribed by the NIRC of 1997, as amended.

The assessment for deficiency IAET is cancelled

Respondent avers that it is not liable for IAET considering that the appropriation amounting to ₱450 million was approved by its Board of Directors and will be used for business expansion purposes, a reasonable need of petitioner's business as provided under Section 3 (b) of RR No. 2-2021.[24] Accordingly, the remaining unappropriated retained earnings reflected in its 2011 Audited Financial Statements amounting to ₱170,911,692 is not in excess of its capital stock of ₱515,236,415.

The Court finds merit in respondent's argument.

Section 3 of RR 2-2001 reads:

[22] Section 75 of R.A. No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, amends Section 249 of the NIRC of 1997 to read as follows:
"SEC. 249. Interest. –
(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the *Bangko Sentral ng Pilipinas* from the date prescribed for payment until the amount is fully paid: Provided, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously."

[23] Regulations Implementing Section 249 (Interest) of the NIRC of 1997, as amended under Section 75 of the R.A. No. 10963 or the TRAIN Law.

[24] *Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997*, February 12, 2001.

> SEC. 3. *Determination of Reasonable Needs of the Business* - An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all the circumstances of the case. To determine the "reasonable needs" of the business in order to justify an accumulation of earnings, these Regulations hereby adhere to the so-called "Immediately Test" under American jurisprudence as adopted in this jurisdiction. Accordingly, the term "reasonable needs of the business" are hereby construed to mean the immediate needs of the business, including reasonably anticipated needs. In either case, the corporation should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits. Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply.
>
> **For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business**:
>
> xxx xxx xxx
>
> b) Earnings reserved for **definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors** or equivalent body[.] xxx (Emphasis supplied)

To substantiate the appropriation of Retained Earnings, respondent offered two Secretary's Certificate by its Corporate Secretary, Brigitte Y. Francisco Chan. The first certificate states that, the Board of Directors approved on December 3, 2010 the appropriation of ₱400 million from the Retained Earnings of the company for business expansion purposes.[25] The second certificate, on the other hand, states that, on December 15, 2011, the Board of Directors approved the increase of Appropriated Retained Earnings made in 2010 from ₱400 million to ₱450 million for the additional costs to be incurred for business expansion purposes.[26] The appropriation made in 2010 and the subsequent increase in 2011 are likewise disclosed in Note 16 of respondent's Notes to Financial Statements.[27]

Considering the appropriation of retained earnings for business expansion purposes, the assessment for IAET has no basis. Therefore, the same must be cancelled.

Respondent is not liable for compromise penalty

Petitioner assessed respondent compromise penalty broken down as follows: ꟿ

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[25] Exhibit P-38, Division Docket Vol. 3, p. 1006.
[26] Exhibit P-39, *Id.* at 1007.
[27] Exhibit P-37-a, *Id.* at 998.

Income Tax	₱ 50,000.00
VAT	50,000.00
EWT	50,000.00
DST	16,000.00
IAET	50,000.00
TOTAL	**₱ 216,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997, as amended.[28] Pursuant to RMO No. 19-2007,[29] compromise penalties are only amounts 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. Clearly, compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Hence, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[30]

WHEREFORE, the **Petition for Review** filed by the Commissioner of Internal Revenue is **PARTIALLY GRANTED**. The Decision dated September 14, 2023 and Resolution dated March 25, 2024 in CTA Case No. 9317 are hereby **REVERSED and SET ASIDE** insofar as documentary stamp tax. Accordingly, respondent The Landmark Corporation is **ORDERED TO PAY ₱519,402.76** representing deficiency documentary stamp tax for taxable year 2011, inclusive of 25% surcharge, 20% deficiency interest and 20%/12% delinquency interest imposed under Sections 248 (A) (1), and 294 (B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as detailed below:

Basic DST	₱	163,092.23
Add: 25% Surcharge		40,773.06
Deficiency Interest from January 5, 2012 to March 31, 2016*		138,337.96
(₱163,092.23 x 20% x 1,548/365 days)		
Total Amount Due, March 31, 2016	₱	**342,203.25**

Deficiency Interest		
From April 1, 2016 to December 31, 2017		
(₱163,092.23 x 20% for 640/365 days)	₱	**57,193.99**

[28] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[29] SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code, August 8, 2007.

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

Delinquency Interest	
From April 1, 2016 to December 31, 2017	
(₱342,203.25 x 20% for 640/365 days)	₱ 120,005.52
Total Amount Due, December 31, 2017	**₱ 519,402.76**

In addition, respondent is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency documentary stamp tax due as of March 31, 2016, in the amount of ₱342,203.25, computed from January 1, 2018 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion and as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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.

JEAN MARIE A. BACORRO-VILLENA
~~Acting~~ Presiding Justice