REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2017** (CTA Case No. 9262)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and CUI-DAVID,** *JJ.*
AYALA LAND INTERNATIONAL SALES, INC., Respondent.	***Promulgated:*** JUN 1 3 2022 1:45pm

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RESOLUTION

UY, *J.*:

For resolution is respondent's ***MOTION FOR RECONSIDERATION*** filed on November 11, 2021,[1] without petitioner's comment, despite due notice, as per Records Verification Report dated March 9, 2022 issued by Records Officer Leocadia D. Victoria of the Judicial Records Division of this Court.[2]

In the said *Motion*, respondent prays for the reconsideration of the Decision promulgated on October 19, 2021, the dispositive portion of which reads:

[1] EB Docket, pp. 130 to 137.
[2] EB Docket, p. 154.

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, the assailed Decision dated September 28, 2018 and Resolution dated February 4, 2019, both rendered by the Court in Division in CTA Case No. 9262 are **REVERSED** and **SET ASIDE**.
>
> Let the case be **REMANDED** to the Court in Division for determination on the merits of respondent's petition seeking the cancellation of the deficiency tax assessments for calendar year 2009 for IT, VAT, EWT, WTC and DST in the aggregate amount of ₱29,226,987.73.
>
> **SO ORDERED.**"

Respondent's arguments:

In its *Motion for Reconsideration*, respondent argues that it admittedly raised the irregularity of the Waivers as among the statement of facts in the Petition for Review but never raised the same as an issue; and that had respondent wanted to rely on the infirmity of the Waivers, respondent would have put such infirmity as the primary issue or even just as an issue for the resolution of the Court.

Furthermore, respondent argues that it was constrained to argue for the invalidity of the waivers for the first time only on appeal because that is the sole issue.

Respondent contends that it had no other option and was constrained to argue for the invalidity of the Waiver because the validity/invalidity of the Waivers was the sole issue in the instant Petition.

Lastly, respondent argues that the application of the doctrine of *in pari delicto* without exception sets a dangerous precedent.

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THE COURT *EN BANC'S* RULING

After a careful review of respondent's arguments in its Motion for Reconsideration, the Court *En Banc* that there are no compelling issues raised that would merit the reversal of the assailed Decision.

Anent the issue of the application of the doctrine of *in pari* delicto, the Court *En Banc* maintains that the doctrine of *in pari delicto* as pronounced in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.*[3] *(Next Mobile* case) is applicable to the present case.

It bears emphasizing that the clear import in the *Next* Mobile case in establishing as an exception to the rule that a defective Waiver does not extend the period to assess tax, are the following:

1. The parties are *in pari delicto* or "in equal fault";
2. The parties must come to court with clean hands;
3. The taxpayer is estopped from questioning the validity of its Waivers; and
4. The Court cannot tolerate this highly suspicious situation.

In the present case, the Court in Division found that the first *Waiver* dated February 6, 2012 was void for the following defects: 1) It was not duly authorized as the said document failed to bear the name of the person who appeared before the notary public, nor was the detail of the person's identity indicated therein; and 2) there was no showing of any Board Resolution authorizing petitioner's representative to sign the waivers.

Again, respondent's representative, Ma. Teresa R. Famy, Chief Finance Officer, who executed the Waiver failed to indicate in the acknowledgement section her name and proof of identity to the notary public and the non-submission of any board resolution or written authority appointing her to sign the same on behalf of respondent is an act of omission attributable to respondent. In other words, since respondent's representative executed the said Waiver, she should have submitted the required proper written authority. Having caused this infirmity of the subject Waiver, respondent is at fault.

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

On the other hand, petitioner is at fault in relation to the acceptance of the subject Waiver for failure to observe the procedures laid down in Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01.

Notably, on various dates, respondent through various dates executed four (4) more Waivers, which means that petitioner and respondent continued to deal with each other relying on these Waivers, and that neither party took any action to rectify the defects therein in order to comply with the aforementioned administrative issuances.

In sum, to the mind of the Court, if respondent had all the intentions to give legal effect to the Waivers it executed, and petitioner had every inclination to perform his duties, both parties could have easily observed the procedures laid down in RMO No. 20-90 and RDAO No. 05-01. However, records show that both parties failed to comply with the subject administrative issuances thereby creating a highly suspicious situation, which this Court will not tolerate, nor countenance. Hence, both parties are *in pari delicto* and as a consequence, the validity of the subject waivers should be upheld.

Finding no valid or cogent reason to overturn our findings and conclusions, the Court *En Banc* affirms its ruling in the Decision dated October 19, 2021.

WHEREFORE, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With due respect, I maintain my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice