REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2065** *(CTA Case No. 9001)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
RCBC SAVINGS BANK, INC., *Respondent.*	Promulgated: OCT 13 2020 11:35 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review ("Petition") filed by the Commissioner of Internal Revenue ("CIR"),[1] assailing the Decision promulgated by this Court's Special First Division ("Court in Division"), which nullified the deficiency tax assessment issued against respondent,[2] and the Resolution, dated 16 April 2019, which affirmed said Decision;[3] with respondent's Comment & Opposition (Re: Petitioner CIR's "Petition for Review" dated 24 May 2019) ("Comment").[4]

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[1] See Petition, Records, Vol. 1, pp. 6-69.
[2] See Decision, Annex "A" of the Petition, Records, Vol. 1, pp. 27-61.
[3] See Resolution, dated 16 April 2019, Records, Vol. 1, pp. 62-69.
[4] See Comment, Records, Vol. 1, pp. 73-99.

The Parties

Petitioner, **CIR,** is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code ("NIRC")*** or other laws enforced by the BIR.

Respondent, **RCBC SAVINGS BANK, INC.,** is a domestic corporation organized and existing under the laws of the Philippines.

The Facts

The following are the undisputed facts as culled from the Decision:[5]

> "On September 7, 2007, [respondent] received Letter of Authority (LOA) No. 2007 00006766 dated August 31, 2007, authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable year 2006.
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> "Thereafter, on December 17, 2009, [respondent] received a Notice of Informal Conference from Zenaida G. Garcia, OIC-Assistant Commissioner-Large Taxpayers Service of the BIR, informing [respondent] of the result of the investigation of its internal revenue taxes for taxable year 2006, and alleging internal revenue tax deficiencies amounting to P1,761,479,304.86 (inclusive of penalties). [Respondent] sent its Written Reply thereto on October 8, 2010.
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> "On August 16, 2011, [respondent] received a Preliminary Assessment Notice (PAN) signed by Olivia O. Lao, HREA, Large Taxpayers Service Programs & Compliance & LTDO, containing the complete details covering the remaining income tax assessment and discrepancies for taxable year 2006 in the aggregate amount of P64,370,235.17 (inclusive of penalties). [Respondent] then sent its Written Formal Reply to the BIR to formally protest the PAN on August 23, 2011.
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> "Subsequently, the BIR issued the Final Assessment Notice (FAN), received by [respondent] on January 16, 2012, reiterating the deficiency income tax assessment outlined in the PAN, and covered the details of the remaining deficiency income tax assessment amounting to P59,844,040.34 (inclusive of penalties) for taxable year 2006.

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[5] Petitioner did not provide a Statement of Facts in his Petition.

"On February 10, 2012, [respondent] sent its Formal Protest on the FAN, addressed to Alfredo V. Misajon, Assistant Commissioner (Large Taxpayers Service) of the BIR.

"On November 13, 2013, Assistant.Commissioner Misajon issued the Final Decision on Disputed Assessment (FDDA), reiterating the deficiency income tax assessment against [respondent]. [Respondent] filed its appeal from the FDDA on December 12, 2013 and said appeal was addressed to former BIR Commissioner Kim S. Jacinto-Henares.

"On January 29, 2015, [respondent] received the Decision dated January 21, 2015 issued by former BIR Commissioner Kim S. Jacinto-Henares, which denied [respondent]'s appeal. The dispositive portion of the Decision reads:

> 'WHEREFORE, predicated on all the foregoing, the Decision dated November 13, 2013 denying the protest of RCBC Savings Bank, Inc. against Assessment Notice No. LTDO-122-IT-2006-00022 demanding payment of P59,844,040.34, representing deficiency income tax for taxable year 2006 is hereby AFFIRMED in all respects.
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> 'Consequently, RCBC Savings Bank, Inc. is hereby ordered to pay the aforestated amount, plus increments that have accrued thereon until the actual date of payment, to the Collection Service, BIR, National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law.'"

"As a result thereof, [respondent] filed the instant Petition for Review before this Court on February 27, 2015."

On 18 December 2018, the Court in Division rendered the assailed Decision, the dispositive portion of which reads, as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, the FAN issued by [petitioner] against [respondent] for deficiency income tax for taxable year 2006 in the total amount of P59,844,040.34, inclusive of increments, is **CANCELLED** and **SET ASIDE.**
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> **SO ORDERED.**"[6]

On 21 January 2019, petitioner filed a Motion for Reconsideration of the Assailed Decision,[7] which the Court in Division denied.[8]

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[6] See Decision, Annex "A" of the Petition, Records, Vol. 1, p. 60.
[7] See Petition, Records, Vol. 1, p. 7.
[8] See Resolution, dated 16 April 2019, Records, Vol. 1, p. 69.

On 28 May 2019, following a granted extension of time, petitioner filed the instant Petition which was met by respondent's Comment.

On 20 August 2019, this Court issued a Resolution referring the case for Mediation.[9] On 23 August 2019, the parties entered into a No Agreement to Mediate.[10]

On 14 October 2019, this Court issued a Resolution submitting the case for Decision.[11]

Hence, this Decision.

The Assigned Errors[12]

1. The Honorable Court's power of judicial review over decisions of the CIR on disputed assessments is by nature exclusive and appellate;

    a. The Honorable Court a quo erred in considering an issue that was belatedly raised by respondent; and

2. The Honorable Court erred in cancelling the deficiency tax assessment issued against respondent on the ground of prescription.

Arguments of the Parties

In his Petition, the CIR alleged the following:[13]

I. The issue on prescription was never raised by respondent during the administrative proceedings before petitioner.

    1. The appellate jurisdiction of this Court over decisions by petitioner on disputed assessments is clear and explicit.

    2. Being in the nature of an appeal, this Court's power is to determine, by review, the propriety of the decision rendered by petitioner based on the arguments and records presented during

[9] See Resolution, dated 20 August 2019, Records, Vol. 1, pp. 100-103.
[10] See No Agreement to Mediate, Records, Vol. 1, p. 104.
[11] See Resolution, dated 14 October 2019, Records, Vol. 1, pp. 105-107.
[12] See Grounds for the Petition, Records, Vol. 1, p. 7.
[13] See Petition, Records, Vol. 1, pp. 8-18.

the administrative level. Since the issue on prescription was not raised before petitioner, the alleged defect of the assessment based on this issue never became part of the records of this case nor was considered by petitioner in the exercise of his quasi-judicial functions in deciding disputed assessments.

3. Respondent should not be allowed to raise for the first time issues, errors, or defenses in relation to the tax assessments which were forgotten or abandoned in the administrative level.

II. The date of acceptance of a waiver is of no moment. The waiver should bind respondent as of its date of execution, *i.e.,* 13 April 2010.

1. A waiver is essentially a unilateral act of one person that results in the surrender of a legal right. As such, it does not require acceptance by petitioner in order to be binding.

2. The fact that petitioner executed not only one (1) but eight (8) waivers proves that petitioner is estopped from questioning the validity of the waivers.

3. The principles declared in ***Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly, Nextel Communications Phils. Inc.)***[14] is equally applicable to the present Petition.

In response, respondent argued, as follows:[15]

I. The Petition is a mere rehash of the Motion for Reconsideration filed by petitioner before the Court in Division. The arguments therein have already been extensively passed upon by the Court in Division when it resolved the said Motion for Reconsideration.

II. The Court did not err in ruling on the issue of prescription raised for the first time by respondent.

1. The issue on prescription can be ruled upon by this Court as it is covered by this Court's "other matters" jurisdiction.

2. If prescription has already set in, petitioner no longer has jurisdiction to issue the assailed deficiency tax assessment. Lack

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[14] G.R. No. 212825, 7 December 2015.
[15] See Comment, Records, Vol. 1, pp. 73-84.

of jurisdiction is an issue that may be raised for the first time in appeal.

3. This 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 a case.

4. A void assessment does not give rise to an obligation to pay deficiency taxes. It divests the taxing authority the right to collect them.

III. The Court did not err in resolving the issue on prescription in respondent's favor.

1. ***Section 222 of the NIRC*** clearly provides that if before the expiration of the time prescribed for assessment of tax, both the CIR and the taxpayer have agreed in writing to its assessment after such time, then the tax may be assessed within the period agreed upon.

2. ***Revenue Memorandum Order No. 20-90 ("RMO 20-90")*** provides that both the date of execution and acceptance should be made before the expiration of the prescriptive period.

The Ruling of the Court En Banc

This Court resolves to deny the Petition for lack of merit.

The arguments raised in the Petition are mere reiterations of those argued before the Court in Division. Considering that these were already extensively and exhaustively passed upon by the Court in Division, there is no reason for this Court to disturb the Court in Division's Decision. Nonetheless, this Court shall tackle once more the parties' arguments to foreclose any doubt in their minds as to its merit.

This Court may rule on the issue of prescription even if raised for the first time on appeal before this Court.

Petitioner contends that since respondent failed to raise the issue of prescription in the administrative level, it should no longer be allowed to argue the same before this Court. This is erroneous.

Section 1, Rule 9 of the Rules of Court clearly provides that Courts are allowed to rule on the issue of prescription even if raised for the first time on appeal or not raised not all by the any of the parties (provided that it is apparent from the pleadings or evidence on record), *viz:*

> Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or <u>by the statute of limitations, the court shall dismiss the claim.</u>**
> (Emphasis and underscoring, Ours)

Further, petitioner's argument has long been struck down in the case of ***Bank of the Philippine Islands v. Commissioner of Internal Revenue.***[16] In said case, the Supreme Court declared the deficiency tax assessment issued against petitioner therein as void due to prescription, although this issue was raised for the first time in the proceedings before the Supreme Court. The High Court declared that it is imbued with sufficient discretion to review matters not otherwise assigned as errors on appeal if it finds that its consideration is necessary in arriving at a complete and just resolution of the case, *viz:*

> "We deny the right of the BIR to collect the assessed DST on the ground of prescription.
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> Section 1, Rule 9 of the Rules of Court expressly provides that:
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>> Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred by prior judgment or by the statute of limitations, the court <u>shall</u> dismiss the claim**. (Emphasis and underscoring supplied)
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> If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. In *Heirs of Valientes v. Ramas,* we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. **The court is imbued with sufficient discretion to review**

[16] G.R. No. 181836, 9 July 2014, *citing Heirs of Valientes v. Ramas,* G.R. No. G.R. No. 157852, 15 December 2010.

> **matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time."**
> (Emphasis, Ours)

Moreover, ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*** provides that this Court may not limit itself to issues stipulated by the parties but may also rule upon related issues necessary for the orderly disposition of the case, *viz:*

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION. 1. Rendition of judgment.-The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
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> **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.** *(2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)"*
> (Emphasis, Ours)

That this Court, in deciding a case, is not limited by the issues raised or agreed upon by the parties in their respective pleadings is not just clear from the above Rule but has also been stressed in ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.***,[17] where the Supreme Court ruled, *to wit:*

[17] G.R. No. 163835, 7 July 2010.

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> xxx xxx xxx
>
> The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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> > **The 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 spirits 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.**
>
> xxx xxx xxx
>
> Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance." (Emphasis, Ours)

Erasing any doubt on the matter is the case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[18] where the Supreme Court categorically declared that this Court can resolve an issue not raised by the parties, *viz:*

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

[18] G.R. No. 183408, 12 July 2017.

> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA 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.** The text of the provision reads:
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> > SECTION 1. Rendition of judgment. - xxx
> >
> > 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.
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."
> (Emphasis, Ours)

Hence, if this Court is allowed to rule upon issues not raised by the parties in their respective pleadings but are necessary for the orderly disposition of the case, more so that this Court should be allowed to rule upon matters which have been raised by the parties for the first time on appeal but are necessary for the just and complete resolution of the case.

<u>The first waiver was belatedly accepted. Hence, it did not extend the prescriptive period for petitioner to assess deficiency taxes.</u>

Petitioner alleges that the date of acceptance of a waiver is of no moment and that the date of execution of the waiver is controlling. It posits that a waiver is a unilateral act of one person that results in the surrender of a legal right. It does not require acceptance by petitioner in order to be binding. Moreover, the fact that petitioner executed not only one (1) but eight (8) waivers only proves petitioner is estopped from questioning the validity of the waivers. These are erroneous.

Section 222 of the NIRC succinctly provides that both petitioner and the taxpayer should have agreed in writing to extend the prescriptive period to assess deficiency taxes before the expiration date:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
>
> xxx xxx xxx
>
> (b) **<u>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</u> 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." (Emphasis and underscoring, Ours)

Clearly, while the usual terminology used to name these agreements to extend the period provided to petitioner to assess deficiency taxes is "waiver," the ***NIRC*** contemplates a bilateral agreement (*i.e.,* where both parties give their consent to the agreement) to extend the prescriptive period. It is not a unilateral act by a taxpayer but a contract agreed upon by both petitioner and said taxpayer. Consequently, petitioner's consent (which is an essential element of a contract) to the waiver executed is necessary to give effect to the extension of the prescriptive period. And following ***Section 222 of the NIRC,*** petitioner's consent must be made before the expiration of the prescriptive period to assess to extend the same.

Furthermore, ***RMO 20-90,*** which was issued by petitioner himself to prescribe the requirements needed for the execution of a valid waiver, provides that the date of execution and acceptance should be made before the expiration of the prescriptive period to wit:

> "e) **Both the date of execution by the taxpayer and the date of acceptance by the BIR should be prior to the expiration of the period of prescription** or before the lapse of the period agreed upon in case a subsequent agreement is executed." (Emphasis, Ours)

Following this, petitioner is estopped from arguing that the date of his acceptance is unnecessary to give effect to a waiver as he himself required, through this issuance, his acceptance (which should be signified before the expiration date) before the prescriptive period can be extended.

Also, the *in pari delicto* ruling in ***Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly, Nextel Communications Phils. Inc.)***[19] (which is one of petitioner's supports to nullify respondent's allegation of prescription, *i.e.,* respondent's act of executing eight (8) waivers estops it from questioning the validity of the waivers) is inapplicable to the present case.

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

The invalidity of the first waiver in the present case was not caused by the fault of both petitioner and respondent as it was in the said case. As duly found by the Court in Division, the first waiver became void solely due to petitioner's fault of not timely accepting the waiver (*i.e.*, acceptance was made on 21 April 2010 by ACIR-Large Taxpayers Service Zenaida G. Garcia) before the expiration of the prescriptive period to assess, which expired on 16 April 2010, following the three (3)-year period to assess under ***Section 203 of the NIRC***, which is counted from the date of filing of the Annual Income Tax Return for taxable year 2006 (*i.e.*, on 16 April 2007). Petitioner cannot pass on the blame to respondent as the latter had no control over when the former would accept the first waiver.

Rather, what is applicable in the case at bar is the Supreme Court's ruling in ***Commissioner of Internal Revenue v. Kudos Metal Corporation***,[20] which provides:

> "Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 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.
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> 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.
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> 3. The waiver should be duly notarized.
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> 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.

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

> **5. <u>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</u> or before the lapse of the period agreed upon in case a subsequent agreement is executed.**
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> 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 and underscoring, Ours)

As the factual finding by the Court in Division that petitioner signified his acceptance on the first waiver (*i.e.,* 21 April 2010) beyond the expiration of the prescriptive period (*i.e.,* 16 April 2010) remains unperturbed, the first waiver did not extend the prescriptive period to assess deficiency taxes against respondent. Similarly, the seven (7) succeeding waivers did not extend the prescriptive period as the first waiver from which these were drawing validity was void to begin with. Consequently, the assessment which was issued as a result of these waivers is void for being issued beyond the prescriptive period to assess.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 18 December 2019 and Resolution dated 16 April 2019 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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