REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MEDICARD PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2158
(CTA Case No. 9049)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

NOV 17 2021 11:35a.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Medicard Philippines, Inc. assailing the Resolutions, dated January 22, 2019 and September 12, 2019, of the Court of Tax Appeals (CTA) Third Division, which ruled that the assessments for deficiency value-added tax (VAT) for the 1st and 2nd quarters of taxable year 2007 have prescribed, while those for the 3rd and 4th quarters are not prescribed.

FACTS

Petitioner Medicard Philippines, Inc. is a corporation organized and existing under the laws of the Philippines with office address at the 8/F The World Centre Building, 303 Sen. Gil Puyat Avenue, Makati City 1200.[1] Petitioner is a large taxpayer, engaged in the business of developing and offering prepaid medical, health maintenance and related services

[1] *Rollo*, Petition for Review, p. 26.

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which include the operation and management of clinics, laboratories, and hospitals for the treatment and care of the sick and injured persons.[2]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building located at Agham Road, Diliman, Quezon City.[3]

The events prior to and giving rise to the instant case are enumerated below:

> 18. Petitioner filed its Quarterly VAT Returns for taxable year 2007 in accordance with Section 114 of the National Internal Revenue Code of 1997 ("1997 NIRC"), as follows:
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> | PERIOD | DATE FILED |
> |---|---|
> | 1ST Quarter | April 23, 2007 |
> | 2nd Quarter | July 20, 2007 |
> | 3rd Quarter | October 24, 2007 |
> | 4th Quarter | February 13, 2008 (amended VAT Return) |
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> 19. On July 15, 2008, petitioner received Letter of Authority ("LOA") No. 00006890 dated July 1, 2008 from the Makati Large Taxpayers District Office ("LTDO") of the BIR Large Taxpayers Service ("LTS") authorizing the examination of petitioner's books of accounts and other financial records for all internal revenue taxes for the period January 1 to December 31, 2007.
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> 20. Subsequently, petitioner was made to execute a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" (the "First Waiver") dated August 13, 2010, supposedly seeking the Commissioner's approval of petitioner's request for more time to submit documents required in connection with the investigation of its internal revenue tax liabilities for the period January 1 to December 31, 2017.
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> 21. Thereafter, petitioner was made to execute two other **undated** waivers (the "Second Waiver" and "Third Waiver", respectively), purportedly to afford respondent more time to assess and collect taxes beyond the prescriptive period under the 1997 NIRC.

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[2] *Id.* at 29.
[3] *Rollo*, Petition for Review, p. 26.

22. On November 21, 2011, petitioner received a Preliminary Assessment Notice dated November 11, 2011 ("PAN") proposing to assess petitioner deficiency taxes including VAT in the aggregate amount of P595,862,722.09 inclusive of interest.

23. In response to the PAN, petitioner sent a letter on December 5, 2011 addressed to Mr. Alfredo V. Misajon, OIC – Assistant Commissioner of the LTS contesting the proposed assessment of alleged deficiency taxes.

24. Petitioner was thereafter made to execute three other waivers on March 14, 2012, January 11, 2013 and January 24, 2013, respectively (the "Fourth Waiver", the "Fifth Waiver" and "Sixth Waiver", respectively).

25. On November 22, 2013, petitioner received the FAN/FLD with Assessment Notice No. VT-122-LA6890-07-13-0105 and the Details of Discrepancies dated November 6, 2013, reiterating the alleged VAT deficiency for alleged undeclared sales for taxable year 2007 in the aggregate amount of P549,550,071.31, inclusive of interest.

26. On December 20, 2013, petitioner protested the FAN/FLD through a letter (the "Protest") dated December 19, 2013 addressed to Mr. Alfredo V. Misajon.

27. On April 11, 2014, respondent, acting through OIC-Assistant Commissioner for LTS, Alfredo V. Misajon, issued an Audit Result/Assessment Notice and Final Decision on Disputed Assessment ("FDDA") dated April 10, 2014 denying the Protest and upholding the deficiency VAT assessment for taxable year 2007 in the aggregate amount of P538,374,679.68.

28. On May 9, 2014, petitioner elevated the Protest to respondent through a request for reconsideration ("Request for Reconsideration") pursuant to Section 3.1.4 of Revenue Regulations No. ("Rev. Regs.") 12-99, as amended by Rev. Regs. 18-2013.

29. On April 14, 2015, respondent issued a Decision denying the Request for Reconsideration through a letter dated April 14, 2015 which petitioner received on April 16, 2015, reiterating petitioner's supposed liability in the aggregate amount of P582,823,612.22 for alleged deficiency VAT, inclusive of interest and compromise penalty.[4]

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[4] *Rollo*, Petition for Review, pp. 29-31.

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Petitioner filed its appeal with the Court of Tax Appeals, docketed as CTA Case No. 9049 on May 15, 2015.

On July 12, 2018, the CTA Third Division issued its Resolution on Prescription[5] declaring that respondent's right to assess petitioner for deficiency VAT for taxable year 2007 was barred by prescription.

On January 22, 2019, the CTA Third Division, upon motion for reconsideration, issued its Resolution[6] (1st Assailed Resolution) partially reversing the July 12, 2018 Resolution, and held that respondent's right to assess petitioner for deficiency VAT for the 3rd and 4th quarters of taxable year 2007 is not barred by prescription.

On September 12, 2019, the CTA Third Division, issued its Resolution[7] (2nd Assailed Resolution) denying petitioner's Motion for Reconsideration [of the Resolution dated January 22, 2019].

On October 30, 2019, within the extended period granted,[8] petitioner filed its *Petition for Review*[9] praying that the assailed Resolutions be reversed and set aside; that respondent's right to assess deficiency VAT for taxable year 2007 be declared prescribed; and, that the FAN/FLD be withdrawn and cancelled.

On January 17, 2020, respondent filed his *Comment (Re: Petition for Review dated October 29, 2019).*[10]

The case was referred to mediation through the Resolution[11] dated January 23, 2020, however, the parties decided not to have their case mediated.[12]

On October 5, 2020, the instant case was submitted for decision.[13]

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[5] *Rollo*, pp. 84-104.
[6] *Rollo*, pp. 7-14.
[7] *Rollo*, pp. 15-23.
[8] *Rollo*, Minute Resolution dated October 18, 2019, p. 25.
[9] *Rollo*, pp. 26-52.
[10] *Rollo*, pp. 142-159.
[11] *Rollo*, pp. 161-162.
[12] *Rollo*, No Agreement to Mediate dated July 21, 2020, p. 168.
[13] *Rollo*, pp. 173-174.

On November 3, 2020, the parties filed their *Joint Manifestation and Motion [With Leave of Court to Defer Resolution in View of Offer of Compromise]*. Said *Manifestation and Motion* was denied through a Resolution, dated November 26, 2020, stating that a mere allegation of an offer of compromise is not sufficient to prevent the Court from deciding the case within the one-year period mandated by the 1987 Philippine Constitution. Absent any proof of the payment of the compromise settlement and acceptance of the compromise offer, there is no valid reason to suspend the promulgation of the decision indefinitely.

Hence, this decision.

ISSUES

Petitioner submits the following grounds for the petition:

I. Waivers executed without the requisite written and notarized authority of the signatory are defective, hence, invalid.

II. The doctrine of estoppel cannot be applied to the instant case as an exception to the statute of limitations on assessment of taxes.

III. Petitioner was not informed of the respondent's acceptance of the first and second waivers.[14]

Petitioner's arguments

Petitioner states that the Supreme Court invalidated waivers that failed to strictly comply with the requirements under Revenue Memorandum Order (RMO) No. 20-90, and Revenue Delegation Authority Order (RDAO) No. 05-01. In the instant case, petitioner argues that since the waivers were not accompanied by notarized written authority establishing the authority of the signatory, they are all invalid.

Petitioner also argues against the application of estoppel. Petitioner argues that the acts of a person without the proper delegation by the board of directors are generally not binding

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[14] *Rollo*, Petition for Review, p. 34.

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on the corporation; that since it has been proven that Ms. Laqui did not act within her authority, no notice or knowledge can be imputed on petitioner; and, that Medicard did not ratify Ms. Laqui's signing of the waivers.

Petitioner also states that it did not benefit from the waivers, considering that the waivers were all executed before the issuance of the PAN. Petitioner shows that it took respondent 3 years and 3 months from the issuance of the LOA to issue the PAN, which periods were covered by the waivers, while petitioner was only given the statutory periods under Section 228 of the NIRC to refute respondent's findings. Thus, petitioner argues that the waivers were clearly issued for the benefit of respondent and petitioner should not bear the brunt of respondent's failure to comply with its own issuances.

Petitioner further argues that it was not informed of respondent's acceptance of the first and second waivers.

Respondent's arguments

Respondent states that the issues raised by petitioner are mere rehash of the arguments raised before the Court in Division.

Respondent argues that Ms. Laqui executed seven (7) waivers on behalf of petitioner. In a Supreme Court case, the Supreme Court held that if a corporation knowingly permits one of its officers, or any of its agents, to act within the scope of an apparent authority, it holds him/her out to the public as possessing the power to do those acts, thus, the corporation will be estopped from denying the agent's authority, against anyone who has dealt in good faith with it through such agent.

Respondent also states that according to petitioner's own witness, Mr. Salvador, petitioner received a copy of the First Waiver, thus, petitioner was duly informed of the respondent's acceptance of the First Waiver. The Second Waiver was likewise received by petitioner.

Finally, respondent argues that petitioner is estopped from questioning the validity of the waivers.

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RULING OF THE COURT

The Petition for Review was timely filed.

On October 1, 2019,[15] petitioner received the Resolution dated September 12, 2019 denying its Motion for Reconsideration and affirming the Resolution dated January 22, 2019.

Petitioner had fifteen days from the date of receipt of the resolution within which to file its petition for review before the Court *En Banc*, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).[16]

Counting fifteen (15) days from October 1, 2019, petitioner had until October 16, 2019 within which to file its petition for review. On October 16, 2019, petitioner filed its *Motion for Extension of Time to File Petition for Review*, which was granted, giving petitioner until October 31, 2019 within which to file its petition for Review.

On October 30, 2019, petitioner filed its *Petition for Review*, hence, the same is timely filed.

There is no compelling reason to reverse or modify the CTA Division's Assailed Resolutions.

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

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after

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[15] Docket, CTA Case No. 9049, Vol. 3, Notice of Resolution, p. 1118
[16] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx
(b) A party adversely 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 the 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.

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> 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.

However, exceptions to the 3-year prescriptive period are provided in Section 222 of the 1997 NIRC, as follows:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
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> (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.
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> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

In the instant case, the parties executed seven (7) waivers, covering the period to assess deficiency taxes for taxable year 2007.

Petitioner alleges that the waivers were not accompanied by the notarized written authority establishing the authority of the signatory to the seven (7) waivers; and, that petitioner was not informed of respondent's acceptance of the First and Second waivers. Due to the foregoing defects, petitioner argues that the waivers are invalid and did not extend the period to assess.

We disagree.

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In *Commissioner of Internal Revenue v. Kudos Metal Corporation (Kudos Metal case)*, [17] the Supreme Court summarized the requirements for a proper waiver:

> 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.
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> 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 filed 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.

A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.[18]

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[17] G.R. No. 178087, May 5, 2010.
[18] *Philippine Journalists, Inc. v. CIR*, G.R. No. 162852, December 16, 2004.

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Thus, the general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes.[19] However, the Supreme Court provided an exception to this general rule, following the equitable principles of *in pari delicto* and estoppel. Thus, in *Commissioner of Internal Revenue v. Next Mobile, Inc.*[20] (*Next Mobile case*), the Supreme Court discussed:

> To be sure, both parties in this case are at fault.
>
> Here, respondent, through Sarmiento, executed *five* Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO 05-01 which requires the presentation of a written and notarized authority to the BIR.
>
> Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue official t**o ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative** before affixing his signature to signify acceptance of the same. It also instructs that **in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized**. Furthermore, it mandates that **the waiver should not be accepted by the concerned BIR office and official unless duly notarized**.
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> Vis-à-vis the five Waivers it received from respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.
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> Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of

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[19] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825. December 7, 2015.
[20] *Id.*

these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent, after deliberately executing the 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.

On the other hand, the stringent requirement in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

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The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. xxx (*citations omitted*)

In the instant case, it is very significant that Ms. Elizabeth B. Laqui, petitioner's VP Controller, signed the seven (7) consecutive waivers, without presenting any notarized written authority to do so for each of the waivers. Respondent, on the other hand, failed to demand the submission of such notarized written authority for the seven waivers that were executed. This mutual failure on the part of both parties to fulfill their obligations renders them *in pari delicto*. Thus, the parties cannot be allowed to raise the defects in the waivers to their own benefit. Instead, as discussed in the abovequoted portion of the *Next Mobile case*, the validity of the waivers shall be upheld consistent with the public policy embodied in the principle that taxes are the lifeblood of the government.

Thus, the Court finds that the waivers are valid by reason of the mutual fault of the parties.

However, considering that the First Waiver was executed only on August 13, 2010, respondent's right to assess for deficiency value-added tax for the 1st and 2nd quarters of taxable year 2007 are still considered prescribed. Respondent's last day to assess for the 1st and 2nd quarters of taxable year 2007 was on April 25, 2010 and July 25, 2010, respectively, clearly before the First Waiver was executed on August 13, 2010.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

The Resolutions dated January 22, 2019 and September 12, 2019, in CTA Case No. 9049, are **AFFIRMED**.

The case is remanded to the CTA Third Division for the determination of the merits of the assessments for the 3rd and 4th quarters of taxable year 2007.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(with due respect, please see Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate 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

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
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REYES-FAJARDO, *JJ.*

Promulgated:
NOV 17 2021 11:35 a.m.

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SEPARATE OPINION

DEL ROSARIO, P.J.:

With due respect, I submit that the present Petition for Review must be dismissed on the ground of prematurity, without prejudice to petitioner's right to appeal the Court in Division's assailed Resolutions upon disposition of the entire case on the merits.

Relative to petitioner's eventual filing of a Petition for Review before the Court *En Banc*, records disclose the following:

1. On July 12, 2018, the Court in Division issued a Resolution declaring respondent's right to assess petitioner for deficiency Value-Added Tax (VAT) for taxable year 2007 was barred by prescription;

2. On January 22, 2019, the Court in Division issued a Resolution partially reversing the July 12, 2018 Resolution and holding that respondent's right to assess petitioner for deficiency VAT for the 3rd and 4th quarters of taxable year 2007 is not barred by prescription;

3. On September 12, 2019, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration of the January 22, 2019 Resolution; and,

4. On October 30, 2019, within the extended period, petitioner filed the present Petition for Review assailing the January 22, 2019 and September 12, 2019 Resolutions.

The January 22, 2019 and September 12, 2019 Resolutions disposed of the case with respect to the assessments for deficiency VAT for the 1st and 2nd quarters of taxable year 2007, *sans* final disposition of the other reliefs pleaded in the Petition for Review filed by petitioner in CTA Case No. 9049 that remains pending before the Court in Division. **In other words, what were brought on appeal before the Court *En Banc* are Resolutions that did not completely dispose of the case nor of a particular matter declared by the Rules of Court to be appealable.**

Truth to tell, the assailed Resolutions are in the nature of "interlocutory orders", as distinguished from a "final order", *viz.*:

> "The Court distinguishes final judgments and orders from interlocutory orders in this wise:
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> > Section 2, Rule 41 of the Revised Rules of Court provides that '(o)nly final judgments or orders shall be subject to appeal.' Interlocutory or incidental judgments or orders do not stay the progress of an action nor are they subject of appeal 'until final judgment or order is rendered for one party or the other.' **The test to determine whether an order or judgment is interlocutory or final is this: 'Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final'.** Xxx xxx xxx. **The word 'interlocutory' refers to 'something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the <u>whole</u> controversy.'"** [1] *(Boldfacing and underscoring supplied)*

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[1] *Judy Anne L. Santos vs. People of the Philippines, and Bureau of Internal Revenue,* G.R. No. 173176, August 26, 2008 citing *De la Cruz v. Paras*, G.R. No. L-41053, 27 February 1976, 69 SCRA 556, 560-561.

The assailed Resolutions may have settled the issue pertaining to assessments for deficiency VAT for the 1st and 2nd quarters of taxable year 2007 but the Court in Division still needs to resolve the remaining VAT assessments for the 3rd and 4th quarters issued for the same taxable year. As the assailed Resolutions did not finally dispose of the case and did not end the Court in Division's task of adjudicating the parties' contentions in determining their rights and liabilities, the assailed Resolutions are interlocutory.

Being interlocutory in nature, the assailed Resolutions may not be the subject of an appeal at this stage. Section 1, Rule 41 of the Rules of Court cannot be any clearer:

> "**Section 1.** *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> xxx
>
> **(c) An interlocutory order;** xxx" *(Boldfacing supplied)*

The issue on the propriety for the Court *En Banc* to act on appeal that involves an interlocutory order is not novel.

In *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.,*[2] the Court *En Banc* **unanimously** dismissed the Petition for Review on the ground of prematurity. In the assailed Resolutions therein, the Court in Division declared as void the assessments for deficiency Income Tax, VAT, and Expanded Withholding Tax for calendar 2010 and set for trial the remaining deficiency taxes for 2010. **The Court *En Banc* found that the assailed Resolutions did not fully and finally dispose of the case and ruled that the Petition for Review should be dismissed on the ground of prematurity, *viz.*:**

> "In other words, **there was yet no judgment rendered in the case that could be elevated on appeal to the Court *En Banc*.** Trial is still necessary for the Court to rule on the merit of the other relief sought by respondent. **Clearly the assailed twin**

[2] CTA EB No. 1593, June 7, 2018; penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan.

Resolutions are of interlocutory nature and cannot be challenged by an appeal." (*Boldfacing supplied*)

In a Resolution dated November 7, 2018 in *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.*, G.R. No. 237079, the Supreme Court **affirmed** the aforequoted ruling of the Court *En Banc*, noting that the resolution declaring certain assessments to have prescribed may not be the subject of appeal considering that further proceedings is necessary anent the other asessments assailed before the Court in Division, *viz.*:

> "Here, the main issue before the Court of Tax Appeals Second Division is the liability of respondent on its alleged deficiency taxes. When it issued the assailed Resolutions, it only dealt with the issue of prescription. **Upon finding that petitioner's assessment of respondent's deficiency income tax, value-added tax, and expanded withholding tax for 2010 was void, it set the case for trial on other deficiency tax assessments. Clearly, the Court of Tax Appeals did not 'make a final disposition of the merits of the main controversy or cause of action[.]' It has yet to determine respondent's liability on its deficiency final withholding tax, documentary stamp tax, and final tax withholding. Thus, no other conclusion can be reached than that the August 30, 2016 and January 12, 2017 Resolutions of the Court of Tax Appeals Second Division are interlocutory orders, which cannot be appealed.**
>
> Moreover, in allowing the appeal of interlocutory orders before the Court of Tax Appeals En Banc may result in multiple appeals, if either party subsequently elevates the judgment of the Court of Tax Appeals Second Division on the remaining tax deficiencies. In prosecuting cases, this Court reminds litigants of its ruling in *E.I. Dupont De Nemours and Co. v. Director Francisco, et al.*:
>
>> Judicial economy, or the goal to have cases prosecuted with the least cost to parties, requires that unnecessary or frivolous reviews of orders by the trial court, which facilitate the resolution of the main merits of the case, be reviewed together with the main merits of the case. After all, it would be more efficient for an appellate court to review a case in its entire context when the case is finally disposed." *(Boldfacing supplied)*

Similarly, in *Commissioner of Internal Revenue vs. First Balfour, Inc.*,[3] the Court *En Banc* again **unanimously** ruled that Resolutions disposing certain assessments but setting the case for

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[3] CTA EB Nos. 1597 & 1600, June 19, 2018; penned by Associate Justice Cielito N. Mindaro-Grulla, concurred by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; with Concurring Opinion by Presiding Justice Roman G. Del Rosario.

further proceedings on other assessments partake the nature of an interlocutory order, *viz.*:

> "Xxx. In the consolidated petitions, the Court takes judicial notice that the docket in CTA Case No. 9020 is still with the Court's Second Division and still at the trial stage for petitioner's presentation of evidence on the **remaining tax** deficiency assessment. Clearly, the case is still pending and has neither been terminated nor disposed.
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> Furthermore, it should be noted that tax assessment by the CIR may at sometimes involve several years, various kinds of deficiency tax assessment with different issues. **To chop a single assessment and allow an appeal on a piecemeal basis and not on the entirety of the assessment would be counterproductive, encourages multiplicity of appeals and unnecessary expenses.**
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> **Evidently, the proper procedure that petitioners should have taken in this case was to await the final termination of the proceedings before the Court in Division, prior to the filing of the instant petition for review, because it is a well settled rule that only final orders or judgments on the merits may be the subject of appeal. This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal**. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law." (*Boldfacing supplied*)

To allow petitioner's appeal of the assailed Resolutions would unnecessarily result in the suspension of proceedings pertaining to the remaining deficiency VAT tax assessments for the 3rd and 4th quarters of taxable year 2007 considering that elevation of the dockets and records of the case to the Court *En Banc* (or to the Supreme Court when further appeal is pursued) is a necessary consequence of appeal. Certainly, such consequence is anathema to the orderly and speedy disposition of cases.

The *ponencia*'s ruling "that the case be remanded to CTA Third Division for the determination of the merits of the VAT assessments for the 3rd and 4th quarters of taxable year 2007," clearly illustrates this consequence. In truth, the case never left the CTA Third Division since there was no complete disposition of the

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case. The assailed Resolution dated January 22, 2019 clearly reveals that it was an interlocutory order as the Court in Division ordered the continuation of trial, to wit:

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is **PARTIALLY GRANTED**. Respondent's assessments for deficiency value-added tax (VAT) for the first and second quarters of TY 2007 are considered **PRESCRIBED**. **However, respondent's right to assess petitioner for the deficiency VAT for the remaining quarters of TY 2007 is not barred by prescription.**
>
> **Let trial proceed on <u>March 5, 2019 at 9:00 a.m.</u> for the determination of petitioner's liability for the deficiency VAT assessment.**
>
> **SO ORDERED.**" (*Boldfacing supplied*)

Of course, the Supreme Court, in *Roman Catholic Archbishop of Manila vs. Court of Appeals,*[4] had the occasion to specify cases that are subject to multiple appeals, *viz.*:

> "The case at bar is not one where multiple appeals can be taken or are necessary. **Multiple appeals are allowed in special proceedings, in actions for recovery of property with accounting, in actions for <u>partition</u> of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage.** The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final." *(Boldfacing and underscoring supplied)*

Sorely, the present controversy does not fall within the category of cases where multiple appeals are allowed.

All told, I **VOTE** to **DISMISS** the Petition for Review filed by the Medicard Philippines, Inc. on the ground of prematurity, **without prejudice to its right to appeal the Court in Division's Resolutions dated January 22, 2019 and September 12, 2019 upon disposition of the entire case on the merits.**

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] G.R. No. 111324 July 5, 1996.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MEDICARD PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2158
(CTA Case No. 9049)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
NOV 17 2021 11:35 a.m.

x- -x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect, I dissent from the majority ruling that the Court *En Banc* has jurisdiction to entertain the instant case. I am of the humble belief that the instant Petition for Review was prematurely filed before this court, and must perforce be dismissed for lack of jurisdiction.

An appeal from the decision or resolution of the Court in Division on a motion for reconsideration falls under the exclusive appellate jurisdiction of the Court *En Banc* pursuant to Section 18 of Republic Act ("R.A.") No. 1125[1], as amended by R.A. No. 9282[2], in relation to Section 3(b) of Rule 8 of the RRCTA. The pertinent provisions provide:

"**SEC. 18.** *Appeal to the Court of Tax Appeals En Banc.* –

[1] An Act Creating the Court of Tax Appeals, June 16, 1954.
[2] An Act Expanding the Jurisdiction of the Court of Tax Appeals, March 30 2004.

xxx xxx xxx

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

"**SEC. 3.** *Who may appeal; period to file petition.* —

xxx xxx xxx

(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 the 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. (*Rules of Court, Rule 42, sec. 1a*)"

While the Court *En Banc* has jurisdiction over final orders and judgments of the Court in Division, this court is without jurisdiction to entertain appeals over interlocutory orders issued by the court *a quo*, as held in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*[3], to wit:

"It is, therefore, clear that **the CTA *en banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division.** In *Denso (Phils.), Inc. v. Intermediate Appellate Court*, we expounded on the differences between a 'final judgment' and an 'interlocutory order,' to wit:

x x x A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy

3 G.R. Nos. 203054-55, July 29, 2015.

> or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move xxx and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'
>
> xxx xxx xxx
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> Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,' *e.g.,* an order denying a motion to dismiss under Rule 16 of the Rules xxx. Unlike a 'final' judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.

Given the differences between a final judgment and an interlocutory order, there is no doubt that the CTA Order dated December 23, 2011 granting private respondent's motion to declare petitioner as in default and allowing respondent to present its evidence *ex parte*, is an interlocutory order as it did not finally dispose of the case on the merits but will proceed for the reception of the former's evidence to determine its entitlement to its judicial claim for tax credit certificates. Even the CTA's subsequent orders denying petitioner's motion to lift order of default and denying reconsideration thereof are all interlocutory orders since they pertain to the order of default.

Since the CTA Orders are merely interlocutory, no appeal can be taken therefrom. Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, provides:

> Section 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

<u>No appeal may be taken from:</u>

xxx xxx xxx

<u>(c) An interlocutory order</u>

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65."[4]

Additionally, in the case above, the Supreme Court discussed the difference between a "final order" and an "interlocutory order". A "final judgment or order" is one that finally disposes of a case, leaving nothing more to be done by the Court in Division in respect thereto. In contrast, an order that does not finally dispose of the case, and does not end the court's task of adjudicating the contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the court, is "interlocutory".

In the case at bar, the Assailed Resolution dated January 22, 2019 issued by the court *a quo*, ruling that Respondent's right to assess Petitioner for deficiency VAT for the first and second quarters of taxable year 2007 is barred by prescription while those for the remaining quarters has not yet prescribed, is an interlocutory order. In fact, it was clearly stated in the dispositive portion of the Resolution that trial will proceed for the determination of Petitioner's liability for the deficiency VAT assessment.

As for the Court in Division's subsequent Assailed Resolution dated September 12, 2019, the same is also an interlocutory order because it merely resolved the motion for reconsideration filed by Petitioner seeking for the reversal of the Resolution dated January 22, 2019.

Considering that the Assailed Resolutions are merely interlocutory orders issued by the court *a quo* in CTA Case No. 9049, the Petition for Review in the case at bar must be dismissed in accordance with Section 1, Rule 50 of the 1997 Rules of Civil Procedure, which is suppletorily applicable to the RRCTA, *viz*:

"RULE 50

Dismissal of Appeal

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4 *Emphasis and underscoring supplied.*

> **Section 1.** *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
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> xxx xxx xxx
>
> (i) The fact that the order or judgment appealed from is not appealable. (1a)"

From all the foregoing, I vote to **DISMISS** for lack of jurisdiction the instant petition. CTA Case No. 9049 should not be subject of an appeal to the Court *En Banc* since the Assailed Resolutions are not yet final.

Ma. Belen RL

MA. BELEN M. RINGPIS-LIBAN
Associate Justice