REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. RICARDO B. ESPIRITU, Revenue District Officer, Revenue District Office No. 50, *Petitioners,*	**CTA EB No. 1415** (CTA Case No. 8537)
	Present:
	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
- versus -	
IP CONTACT CENTER OUTSOURCING, INC., *Respondent.*	Promulgated: JUN 05 2017 3:16 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal of the Decision dated September 10, 2015,[2] (assailed Decision) as well as the Resolution dated December 15, 2015[3] (assailed Resolution) of the Third Division (Court in Division)[4] of this Court in CTA Case No. 8537, entitled *IP Contact Center Outsourcing, Inc. v. Hon.*

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[1] Court *En Banc's* Docket, pp.6-16.
[2] *Id.*, pp. 19-45.
[3] *Id.*, pp. 47-50.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

Commissioner Kim S. Jacinto-Henares, Hon. Ricardo B. Espiritu, Revenue District Officer, Revenue District No. 50.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice Nos. IT-LA3529-07-12-0418 and WE-LA3529-07-12-0418 dated April 12, 2012 are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

Assailed Resolution:

> "**WHEREFORE**, respondent's 'Motion for Reconsideration' is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES[5]

Petitioner Hon. Kim S. Jacinto-Henares was the then Commissioner of Internal Revenue (CIR), head of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges imposed by the National Internal Revenue Code of 1997, as amended (1997 NIRC).

Petitioner Hon. Ricardo B. Espiritu is the Revenue District Officer of the BIR Revenue District Office (RDO) No. 50.

Respondent IP Contact Center Outsourcing, Inc. (IPCCO) is a corporation duly organized and existing in accordance with and by virtue of the laws of the Republic of the Philippines, with principal office at 34/F, Tower II Plaza, Ayala Avenue, Makati City. It is engaged in the business of business process outsourcing activities.

[5] Assailed Decision, pp. 1-2, Court *En Banc*'s Docket, pp. 19-20.

THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated September 10, 2015, are as follows:[6]

"On April 15, 2011, IPCCO received a copy of the Preliminary Assessment Notice (PAN) dated April 12, 2011 from the Revenue Region (RR) No. 8, Makati City, assessing IPCCO of deficiency income tax in the amount of P1,970,656.68 and P2,540,624.85 deficiency expanded withholding tax (EWT) for taxable year 2007.

IPCCO disputed the assessment in a letter-explanation dated May 30, 2011. After considering the issues raised by IPCCO in its letter-explanation, the 2007 Final Assessment Notice (2007 FAN) with Details of Discrepancies was issued by RR No. 8, assessing IPCCO of deficiency income and deficiency EWT, broken down as follows:

KIND OF TAX	BASIC TAX	INTEREST	TOTAL
Income Tax	₱ 968,966.91	₱ 792,694.57	₱ 1,761,661.48
EWT	₱ 1,533,280.54	₱ 1,330,803.49	₱ 2,864,084.03
Total	₱ 2,502,247.45	₱ 2,123,498.06	₱ 4,625,745.51

On May 18, 2012, IPCCO filed its Protest against the 2007 FAN within thirty (30) days from its receipt thereof on April 15, 2012.

On June 5, 2012, IPCCO, through the undersigned counsel, received a letter dated May 30, 2012 (May 30, 2012 Letter) from RR No. 8, informing IPCCO that the entire docket together with its Protest against the 2007 FAN was already endorsed to RDO No. 50.

Sixty (60) days from the filing of the Protest against the 2007 FAN, IPCCO submitted a copy of its General Ledger for 2007, pursuant to Section 3.1.5 of Revenue Regulation[s] No. 12-99 through a letter dated July 17, 2012 (July 17, 2012 Letter).

[6] Court *En Banc's* Docket, pp. 20-24 (Citations omitted).

On July 27, 2012, IPCCO received a Preliminary Collection Letter dated July 18, 2012 from RDO No. 50 which it considered as an implied denial of its protest against the 2007 FAN. However, on August 6, 2012, IPCCO received a letter from RR No. 8 dated July 30, 2012, notifying IPCCO that its July 17[,] 2012 Letter, together with copies of its General Ledger for 2007, was already endorsed to RDO No. 50 for consolidation with the main docket earlier forwarded to the said district.

As shown in the Details of Discrepancies attached in the 2007 FAN, the deficiency income tax assessment against IPCCO arose from the alleged (a) undeclared sales, (b) disallowed expenses due to non-withholding, and (c) unaccounted source of cash, *viz*:

Taxable Income (Loss) per Return		₱ 16,669,751.00
Add: Adjustments/Disallowances		
a. Undeclared Sales	₱ 18,877,436.86	
b. Disallowed expenses due to non withholding	₱ 9,795,253.80	
c. Unaccounted Source of Cash	₱ 3,626,206.20	₱ 32,298,896.86
Taxable Income per Investigation		₱ 48,968,647.86
Income Tax Due per Investigation (3% of the National Government for the 5% GIT)		₱ 1,469,059.44
Less: Tax Paid per Return		₱ 500,092.53
Basic Tax Still Due		₱ 968,966.91
Add: Interest from 16 Apr. 2008 to 18 May 2012		₱ 792,694.57
Total Amount Due		₱ 1,761,661.48

The BIR contended that IPCCO allegedly has undeclared sales through the following reconciliation schedule:

AR, end (net of VAT)		₱ 19,083,297.32
Add: Sales per VAT Return		₱ 68,159,219.04
Total		₱ 87,242,516.36
Less: AR, beg. (net of VAT)		₱ 312,212.50
Sales to be Accrued		₱ 86,930,303.86
Less: Sales per ITR	₱ 59,478,387.00	
Sales of Prepaid Cards	₱ 8,574,480.00	₱ 68,052,867.00
Undeclared Sales		₱ 18,877,436.86

To protect its interests and to avoid any possible lapse of the thirty (30)-day period to appeal to this Court, petitioner filed its Petition for Review on August 28, 2012.

On October 25, 2012, respondents filed a 'Motion to Dismiss the Petition for Review for Lack of Jurisdiction' arguing that the Preliminary Collection Letter dated July 30, 2012 was not respondents' final decision on petitioner's protest against the 2007 FAN, and hence, the Court of Tax Appeals (CTA) could not take cognizance over the matter.

On November 26, 2012, petitioner filed its 'Comment/Opposition (to the Motion to Dismiss dated 25 October 2012)'. It is argued that the CTA had jurisdiction over the case since it was indubitable that the Preliminary Collection Letter wherein respondents not only demanded payment of the amount assessed but also gave the warning that in the event the taxpayer failed to pay the same, respondents would be constrained to enforce the collection by means prescribed by law, is a final decision denying IPCCO's protest. Moreover, jurisprudence dictates that the determination of whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer, and not upon the title thereof.

In a Resolution dated December 13, 2012, the respondents' Motion to Dismiss was denied.

On January 2, 2013, respondent filed its Answer which was later amended when the Court granted respondents' 'Motion for Leave to Admit Amended Answer'.

Petitioner and respondents filed their Pre-Trial Briefs on February 11 and 7, [2013,] respectively.

On November 28, 2013, the Court received the Joint Stipulation of Facts and Simplification of Issues (JSFI) posted by both parties by registered mail on November 25, 2013 which was approved by the Court in the Pre-Trial Order issued on December 20, 2013. The initial presentation of petitioner's evidence was then set on January 16, 2014.

Trial ensued thereafter. Petitioner presented its evidence and its sole witness, Ms. Mary Jenelle Palma, the OIC Finance of petitioner, who testified, among others, that petitioner received and disputed the PAN through a letter-explanation, that petitioner received the FAN and timely filed a Protest, that the assessed deficiency of tax assessment of petitioner for taxable year 2007 as prepared by the BIR was erroneous, and that the Petition for Review was filed on time. After the presentation of its evidence, petitioner rested its case and filed its Formal Offer of Evidence.

However, in a Resolution dated April 11, 2014, the Court denied the admission of petitioner's several exhibits which prompted petitioner to file a 'Motion for Reconsideration (of the 11 April 2014 Resolution)' on May 7, 2014.

On June 26, 2015, the Court issued a Resolution which set aside the Resolution dated April 11, 2014, ordered petitioner to pay a fine of P5,000.00, pursuant to the Judicial Affidavit Rule and Section 10, CTA Circular No. 01-2013, and set a Commissioner's Hearing for the submission of the original documents of previously denied Exhibits 'P-5' to 'P-20' and for comparison of the photocopies with the originals. In that same Resolution, the Court also admitted Exhibits 'P-24' to 'P-24-a' and 'P-25' to 'P-25-a'.

Petitioner, however, was unable to present any documents for marking during the Commissioner's Hearing. Instead, petitioner filed a 'Motion to Recall Witness' where petitioner moved to recall Ms. Palma to the witness stand to justify the presentation of secondary evidence as petitioner as (sic) unable to present the originals of Exhibits 'P-5' to 'P-20'.

During the hearing on September 15, 2014, petitioner's Motion to Recall Witness was denied for lack of merit.

Respondent, on the other hand, presented its evidence in chief with Revenue Officer Jose Eric Z. Almosara as its lone witness. Mr. Almosara testified that he assessed petitioner's deficiency IT and EWT, that petitioner was able to only substantially comply with the documents the BIR required them to submit, that based on the FAN, petitioner has undeclared sales, disallowed expenses due to non-withholding and unaccounted source of cash and basic tax due, and that the FAN issued to petitioner has not yet prescribed.

Respondent filed its Formal Offer of Evidence on September 25, 2014 and all evidence offered therein were admitted by the Court in a Resolution dated January 30, 2015.

> On September 30, 2014 petitioner filed a 'Motion for Reconsideration (of the September 15, 2014 Order) which denied its motion to recall witness.
>
> In a Resolution dated January 30, 2015, the Court denied petitioner's motion and petitioner's Exhibits 'P-5' to 'P-20' were denied with finality as well. Both parties were also ordered to file their respective Memoranda within thirty (30) days from notice.
>
> Petitioner filed its Memorandum on March 20, 2015, while respondent posted her Memorandum on March 31, 2015 which the Court received on April 16, 2015. Considering the foregoing, the case was submitted for decision in a Resolution dated April 22, 2015."

On September 10, 2015, the Court in Division rendered the assailed Decision granting respondent's Petition for Review and thus cancelling the Final Assessment Notices issued by petitioners against respondent.

Aggrieved, petitioners filed a Motion for Reconsideration on October 8, 2015 which the Court in Division denied in the assailed Resolution.

On January 25, 2016, petitioners filed the present Petition for Review.

On February 12, 2016, respondent filed its Answer/Comment Ad Cautelam (On the Petition For Review dated 19 January 2016).

In a Resolution dated April 21, 2016, the Court *En Banc* gave due course to the present Petition for Review. Accordingly, the Court *En Banc* required the parties to submit their Memoranda within thirty (30) days from their receipt thereof.

On June 3, 2016, respondent filed its Memorandum. On the other hand, petitioners failed to file their Memoranda as per the Records Verification Report issued by this Court's Judicial Records Division dated June 22, 2016.

Thus, through the Court *En Banc*'s Resolution dated July 7, 2016, the present case was submitted for decision.

THE ISSUE

In the present Petition for Review, petitioners have raised the following issues:[7]

a. Whether the Honorable Third Division of the CTA erred in granting respondent's petition for review; and

b. Whether the Honorable Third Division of the CTA erred in denying herein Petitioners' Motion for Reconsideration.

THE COURT *EN BANC*'S RULING

Before going into the merits, the Court shall determine first whether it has jurisdiction over the present Petition for Review.

As borne out by the records, petitioners filed on January 12, 2016 via registered mail a Motion for Extension of Time to File Petition for Review. In the said Motion, petitioners stated that they received the Court in Division's Resolution denying their Motion for Reconsideration on December 28, 2015. Petitioners prayed that they be given an extension of fifteen (15) days from January 12, 2016 or until January 27, 2016 within which to file their Petition for Review.

On January 26, 2016, the Court *En Banc* granted petitioners' Motion. As prayed for, petitioners were given 15 days from January 12, 2016 or until January 27, 2016 within which to file their Petition for Review.

On January 25, 2016, petitioners filed the present Petition for Review by registered mail. Hence, the Petition for Review was timely filed.

After a circumspect evaluation of the facts as well as the applicable laws and jurisprudence, the Court *En Banc* finds merit in the Petition.

Section 203 of the 1997 NIRC provides for a period of three (3) years within which the BIR may assess and collect any deficiency internal revenue tax from a taxpayer, to wit:

> SEC. 203. *Period of limitation upon assessment and collection.* — Except as provided in the Section 222, **internal revenue taxes shall be assessed within three (3) years after**

[7] *Id.*, pp. 7-8.

> **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 case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed**. For the 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.** *(Emphasis supplied)*

The rationale for the foregoing rule was explained by the Supreme Court in *Commissioner of Internal Revenue v. Standard Chartered Bank*[8] in this wise:

> "This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."

One of the exceptions to the three-year prescriptive period for the assessment of deficiency internal revenue taxes pursuant to Section 203 of the 1997 NIRC is that provided under Section 222(b) of the 1997 NIRC which reads:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —*
>
> xxx xxx 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.** *(Emphasis supplied)* Jr

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[8] G.R. No. 192173, July 29, 2015, 764 SCRA 183.

Based on the above provision, the original three-year prescriptive period may be extended by virtue of a valid waiver. In this regard, the taxpayer and the BIR may stipulate to extend the assessment period by means of written agreement executed prior to the expiration of the period prescribed by law, and likewise by subsequent written agreements executed before the lapse of the period previously agreed upon.

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[9] the Supreme Court discussed the requirements for a properly executed waiver, as follows:

> "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:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after _____ 19___,' which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

[9] G.R. No. 178087, May 5, 2010, 620 SCRA 241-244.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

In a catena of cases,[10] the Supreme Court ruled that a Waiver of the Statute of Limitations must be carefully and strictly construed considering that it is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations. As thoroughly explained by the Supreme Court in *Philippine Journalists*,[11] to wit:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed." *(Emphasis supplied)*

[10] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 227 ("*Philippine Journalists*"); *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008, 556 SCRA 709; *Commissioner of Internal Revenue v. Kudos Metal Corporation*, supra, Note 9; *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015, 764 SCRA 183.

[11] *Id.*

However, in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*,[12] the Supreme Court carved out an exception to the rule of strict compliance to the requirements for the execution of the Waiver of Statute of Limitations. The relevant portion of the said decision reads:

> "To be sure, both parties in this case are at fault.
>
> x x x x x x x x x
>
> Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of 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 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 requirements 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 very 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

[12] G.R. No. 212825, December 7, 2015 ("*Next Mobile*").

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.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

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 [No. 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 the 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. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO [No. 05-01]. Nevertheless, petitioner's

> negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith." *(Emphasis supplied and citations omitted)*

In the assailed Decision, the Court in Division found that the first (1st) of the three (3) waivers executed by the parties failed to strictly follow the prescribed format as required under RMO No. 20-90 by failing to specify the amount of tax due.[13] The Court in Division likewise ruled that since the 1st waiver was void, the succeeding waivers have likewise no force and effect.[14]

Nonetheless, the Court *En Banc* finds that the aforequoted pronouncement of the Supreme Court in the *Next Mobile* case applicable to the present case.

In the present case, both the petitioners and respondent are *in pari delicto*. The respondent executed the subject waiver in consideration of the opportunity to gather and submit documents to substantiate and defend its case before the BIR at the investigation stage. At the same time, by virtue of the waiver, respondent was able to postpone the payment of subject taxes assessed against it. And yet, after enjoying such benefits, respondent readily challenged the validity of the waiver when the effects thereof were not in its favor. Verily, respondent's act of impugning the subject waiver after benefitting therefrom and allowing the CIR to rely thereon is an act of bad faith.

On the other hand, the CIR was also remiss in its duty of faithfully complying with its own issuances. The CIR ought to ensure that all of the requirements for the execution of a valid waiver are carefully and completely followed. But as found by the Court in Division, the 1st waiver executed by the parties failed to strictly follow the prescribed format as required under RMO No. 20-90 by failing to specify the amount of tax due.

Considering that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer,[15] both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences.

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[13] Court *En Banc's* Docket, pp. 39-43.
[14] *Id.*, p. 43.
[15] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* supra, Note 10.

In the same vein, respondent did not come to the court with clean hands. It cannot be allowed to benefit from the flaws of its own waiver and insists on its invalidity to evade its obligation to pay deficiency taxes, when in committing such flaws, the respondent itself is partly to blame.

Moreover, respondent is likewise estopped from challenging the validity of the subject waiver. Respondent allowed petitioners to rely on the waiver they have executed and kept mum on the waiver's defect. Respondent did not raise any objection against the waiver's validity up until it was already assessed with deficiency taxes and penalties.

Accordingly, and in view of the Supreme Court's Decision in the *Next Mobile* case, the Court *En Banc* holds that the subject waiver had validly extended the right of the government to assess respondent of its deficiency tax liabilities for taxable year 2007.

WHEREFORE, the Petition for Review is **GRANTED**. The Decision dated September 10, 2015 and the Resolution dated December 15, 2015 promulgated by the Third Division of this Court are **SET ASIDE**.

Let this case be **REMANDED** to the Court in Division for complete determination of respondent's deficiency tax liabilities for taxable year 2007.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO - see concurring opinion Presiding Justice	**LOVELL R. BAUTISTA** Associate Justice

(With due respect, I join J. Liban's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

(With due respect, I concur with J. Liban's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. RICARDO B. ESPIRITU, Revenue District Officer, Revenue District Office No. 50, *Petitioner,*	**CTA EB NO. 1415** (CTA Case No. 8537)
-versus-	Present: Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
IP CONTACT CENTER OUTSOURCING INC., *Respondent.*	Promulgated: JUN 05 2017 3:16 p.m.

x --- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in granting the Petition for Review filed by the Commissioner of Internal Revenue (CIR) upon a finding that both parties are *in pari delicto* in causing the infirmities of the subject waiver, thus, effectively extending the right of the government to assess respondent of deficiency tax liabilities for taxable year 2007.

The teachings in *Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.)*[1] is in point. In that case, the validity of the defective waivers were nonetheless upheld based on a categorical finding that both parties are *in pari delicto* in causing the deficiencies of the subject waivers. While noting the fault of the Bureau of Internal Revenue (BIR) in failing to comply with its rules on waivers, the Supreme Court observed that Next Mobile Inc., respondent therein, actually executed five (5) defective waivers, delivered to the BIR one after the other. By reason of such waivers, the BIR was effectively induced to delay the

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[1] G.R. 212825, December 7, 2015.

assessment and eventual collection of tax deficiencies against the taxpayer. Thus, the Supreme Court concluded that "the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of [the CIR's] assessment of [Next Mobile Inc.'s] tax liabilities."

The applicability of *Next Mobile* to the present case cannot be any clearer, as elucidated in the majority opinion. I must say, however, that there is nothing in the afore-stated opinion that indicates, even remotely, that makes the "Next Mobile case's '*in pari delicto*' pronouncement the general rule and not the exception" as suggested in the minority opinion. **The *in pari delicto* rule necessarily applies only in each and every case where facts and circumstances akin to those in *Next Mobile* are present.**

"The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and **its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.** The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result".[2]

If estoppel is not applied, the Government's ability to collect can easily be jeopardized. The probability of unscrupulous government officials conniving with taxpayers in "executing defective" waivers to foreclose collection of the tax due, cannot be discounted.

Otherwise stated, to totally discount the application of the *in pari delicto* rule to include **<u>all</u>** situations involving "defective waivers" despite the fact that they were actually utilized to prevent an assessment and/or collection of deficiency taxes would set a dangerous and mischievous precedent. In the language of *Next Mobile*:

> "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. **The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith.**

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[2] *Megan Sugar Corporation vs. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo; New Frontier Sugar Corporation and Equitable PCI Bank,* G.R. No. 170352, June 1, 2011.

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> **Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.**
>
> xxx xxx xxx
>
> **xxx The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith."** (Boldfacing supplied)

I am not unaware of the recent pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[3] Yet, I humbly stress that *Philippine Daily Inquirer* did not in any way modify, much less reverse, the doctrine laid down in *Next Mobile.* Parenthetically, *Philippine Daily Inquirer* is emphatic in its finding that the defective waivers therein pertain to the BIR's failure to comply with RMO 20-90 and RDAO 05-01. **Facts and circumstances that show an equal fault on the part of the taxpayer are absent, which could have otherwise justified a finding of "*in pari delicto.*"**

In fine, since the factual milieu of *Next Mobile* and *Philippine Daily Inquirer* are significantly different from each other, it would be inappropriate to conclude that *Philippine Daily Inquirer* has set aside the "*in pari delicto*" rule enunciated in *Next Mobile*.

All told, I VOTE to GRANT the Petition for Review and accordingly, REMAND the case to the Court in Division for determination of respondent's tax liabilities for taxable year 2007.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] G.R. No. 213943, March 22, 2017.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. RICARDO B. ESPIRITU, Revenue District Officer, Revenue District Office No. 50,
Petitioner,

-versus-

IP CONTACT CENTER OUTSOURCING INC.,
Respondent.

CTA EB NO. 1415
(CTA Case No. 8537)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 0 5 2017 3:16 p.m.

X---X

DISSENTING OPINION

RINGPIS-LIBAN, J.:

With all due respect to the Decision penned by Hon. Juanito C. Castañeda, Jr., I believe that petitioner's Petition for Review should be denied for the reasons discussed below.

The *Ponencia* heavily relied on *Commissioner of Internal Revenue v. Next Mobile, Inc.*[1] (Next Mobile case) in concluding that the parties are *in pari delicto* and remanding the case to the Court in Division, to wit:

> "Nonetheless, the Court En Banc finds that the aforequoted pronouncement of the Supreme Court in the *Next Mobile* case applicable in the present case.

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

In the present case, both the petitioners and respondent are *in pari delicto*. **The respondent executed the subject waiver in consideration of the opportunity to gather and submit documents to substantiate and defend its case before the BIR at the investigation stage. At the same time, by virtue of the waiver, respondent was able to postpone the payment of subject taxes assessed against it.** And yet, after enjoying such benefits, respondent readily challenged the validity of the waiver when the effects thereof were not in its favor. Verily, respondent's act of impugning the subject waiver after benefitting therefrom and allowing the CIR to rely thereon is an act of bad faith.

On the other hand, the CIR was also remiss in its duty of faithfully complying with its own issuances. She ought to ensure that all of the requirements for the execution of a valid waiver are carefully and completely followed. But as found by the Court in Division, the 1st waiver executed by the parties failed to strictly follow the prescribed format as required under RMO No. 20-90 by failing to specify the amount of tax due.

Considering that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer,[2] both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences." *(Emphasis supplied)*

I have reservations about making the *Next Mobile* case's *"in pari delicto"* pronouncement the general rule and not the exception. First of all, this would result in the absurd consequence of invalidating the taxpayer remedy of being able to waive the statute of limitations, especially in the case where multiple waivers are executed by the parties. The cited benefits in the *Ponencia* which respondent IP Contact received are the very same reasons why parties execute a waiver in the first place.

If this becomes the rule and not the exception, are we saying that if the CIR and taxpayer execute multiple waivers, by virtue of the fact that neither of them did not point out defects in a prior waiver, they are already *in pari delicto*, regardless of which party caused the first defect? By that yardstick, the CIR, or any of his authorized representatives, could be as remiss in their duties as they

[2] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

want, secure in the knowledge that, regardless of how many faulty waivers are executed between the parties, because of the *in pari delicto* rule, the assessment will still push through. If this situation obtains, the principle that taxpayers are not estopped to raise the defense of prescription will be rendered sterile, on the one hand, and, on the other, waivers will be effectively invalidated because regardless of whether it has been the BIR that has caused the defect, the taxpayer bears the consequences of their lapses solely because they have asked for the waiver in the first place and benefited from the reasons for asking that waiver. That could not have been the intent of the remedy afforded to taxpayers by the law. Even the *Next Mobile case* itself says that its ruling was to be the exception due to the "peculiar circumstances" of the case.[3]

The *In Pari Delicto* rule is embodied in Article 1411 of Chapter 9 of the Civil Code under "Void and Inexistent Contracts", thus:

> **ART. 1411.** When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.
>
> This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

From the foregoing, for the *in pari delicto* rule to apply, it is imperative that a) the nullity proceeds from the illegality of the cause or object of the contract; and b) the act constitutes a criminal offense; i.e. delict. A contract to waive the statute of limitations is not an illegal one because it is specifically allowed by law. Furthermore, in this particular case, the failure of the CIR's representative to indicate the amount of the tax (in the case of the 1st Waiver) is also not a criminal offense. At most, the liability of the neglectful officer is administrative. There is no room for the application of the *in pari delicto* rule.

In fact, in a recently decided case by the Supreme Court, *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[4] (PDI Case) promulgated on March 28, 2017 by the Court's Second Division, the Court declined to follow the *Next Mobile* case.

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[3] *Id.* at Note 1, p. 10.
[4] G.R. No. 213943, March 28, 2017.

In the *PDI Case*, the CTA First Division granted the Petition for Review field by PDI and canceled the Formal Letter of Demand (FLD) and Assessment Notices issued by the Bureau of Internal Revenue (BIR) for deficiency Value Added Tax (VAT) and income tax for taxable year 2004.

> "The CTA First Division further ruled that Section 222(b) of the NIRC authorized the extension of the original three-year prescriptive period by the execution of a valid waiver upon the agreement in writing between the taxpayer and the BIR, provided: (1) the agreement was made before the expiration of the three-year period and (2) the guidelines in the proper execution of the waiver are strictly followed. The CTA First Division found that while the First and Second Waivers were executed in three copies, the BIR Failed to provide the office accepting the waivers with their respective third copies. The CTA First Division found that the third copies were still attached to the docket of the case. The CTA First Division also found that the BIR Failed to prove that the third Waiver was executed in three copies. Further, the revenue official who accepted the Third Waiver was not authorized to do so. The CTA First Division also noted that the Second Waiver would have expired on 31 December 2007 but the Third Waiver was already executed on 20 December 2007, meaning there was enough time to have it signed by the ACIR of the Large Taxpayers Service. The CTA First Division concluded that due to the defects in the Waivers, the three-year period within which to assess PDI was not extended. x x x"[5]

The CTA Court *En Banc* affirmed the CTA First Division's Decision and denied the CIR's motion for reconsideration. In ruling on the issue of prescription, the Supreme Court said:

> "Indeed, the Waivers executed by the BIR and PDI were meant to extend the three-year prescriptive period, and would have extended such period were it not for the defects found by the CTA. This further shows that at the outset, the BIR did not find any ground that would make the assessment fall under the exceptions.
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> In *Commissioner of Internal Revenue v. Kudos Metal Corporation*[6], the Court ruled:
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> x x x x x x x x x

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[5] *Id.* at p. 12.
[6] 634 Phil. 314 (2010).

In this case, the CTA found that contrary to PDI's allegations, the First and Second Waivers were executed in three copies. However, the CTA also found that the CIR failed to provide the office accepting the First and Second Waivers with their respective third copies, as the CTA found them still attached to the docket of the case. In addition, the CTA found that the Third Waiver was not executed in three copies.

The failure to provide the office accepting the waiver with the third copy violates RMO 20-90 and RDAO 05-01. Therefore, the First Waiver was not properly executed on 21 March 2007 and thus, could not have extended the three-year prescriptive period to assess and collect taxes for the year 2004. To make matters worse, the CIR committed the same error in the execution of the Second Waiver on 5 June 2007. Even if we consider that the First Waiver was validly executed, the Second Waiver failed to extend the prescriptive period because its execution was contrary to the procedure set forth in RMO 20-90 and RDAO 05-01. Granting further that the First and Second Waivers were validly executed, the Third Waiver executed on 12 December 2007 still failed to extend the three-year prescriptive period because it was not executed in three copies. In short, the records of the case showed that the CIR's three-year prescriptive period to assess deficiency tax had already prescribed due to the defects of all the Waivers.

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The CIR also argues that PDI is estopped from questioning the validity of the Waivers. We do not agree. As stated by the CTA, the BIR cannot shift the blame to the taxpayer for issuing defective waivers.[7] The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself.[8] A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.[9]"

The Supreme Court, therefore, sustained the CTA En Banc's findings which cancelled the FLD and Assessment Notice for taxable year 2004 issued by the BIR against PDI.

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[7] *Id.* at Note 2.
[8] *Id.*
[9] *Id.*

Similar to the circumstances in the PDI case, the Court in Division had the following findings in its Decision:

> "As per the findings of the Court and contrary to the allegations of petitioner, the 1st Waiver was indeed executed by petitioner on November 2, 2010, accepted by respondent on November 8, 2010, and a copy of which was furnished to and received by petitioner on November 9, 2010. However, despite the existence of the 1st Waiver having been indubitably established which would have extended respondent's period to assess to May 4, 2011, the same is **fatally infirm for failing to specify the amount of tax due**.
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> x x x x x x x x x
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> The infirmities in the 1st Waiver, however, effectively did not extend respondent's period to assess. A waiver, being void from its inception, does not give rise to a right for which respondent may exercise; it was as if no waiver to extend the period to assess was ever executed. The first waiver being a void one, the succeeding waivers executed by the parties have no force and effect as to bind the parties.[10]
>
> With respondent's failure to issue the assessment notices within three (3) years from the date petitioner filed its income and expanded withholding tax returns, in view of the invalidity of the three Waivers of the Statute of Limitations, respondent's period to assess had already prescribed. **The inescapable conclusion, therefore, is that the 2007 FAN is void for having been issued beyond the prescriptive period and, as a consequence thereof, the assessments for deficiency IT and EWT must be cancelled.**" *(Emphasis supplied)*

It is at this juncture that the following provisions in the Civil Code on contracts becomes relevant and imperative, especially in the light of the long-standing doctrine that waivers are bilateral contracts.[11]

ART. 1318. There is no contract unless the following requisites concur:

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[10] Philippine Hoteliers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6985, March 9, 2009.
[11] *Id.* at Note 2.

> (1) Consent of the contracting parties;
> **(2) Object certain which is the subject matter of the contract;**
> (3) Cause of the obligation which is established.
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> x x x x x x x x x
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> **ART. 1349. The object of every contract must be determinate as to its kind.** The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.
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> x x x x x x x x x
>
> **ART. 1356.** Contracts shall be obligatory, in whatever form they may have been entered into, **provided all the essential requisites for their validity are present.** However, **when the law requires that a contract be in some form in order that it may be valid or enforceable**, or that a contract be proved in a certain way, **that requirement is absolute and indispensable.** In such cases, the right of the parties stated in the following article cannot be exercised. *(Emphases supplied)*

In this particular case, as the Court in Division held, the 1st waiver is fatally infirm for failing to specify the amount of tax due. The aforequoted provisions lend support to that reasoning why the 1st waiver is a void contract -- there is no object certain and since it lacks an essential requisite for the waiver to be valid, it is, therefore, **void**. The nullity of the 1st Waiver did not stem from the illegality of the cause or object of the contract and the acts surrounding its execution were not delicts or crimes. Hence, the *in pari delicto* rule cannot apply.

Moreover, in accordance with Article 1356 of the Civil Code, the law requires that the waiver be in a specific form, the proper form prescribed by RMO 20-90, as upheld by the Supreme Court in the *Kudos Metal case.*[12] This requirement has been previously discussed and emphasized in numerous cases.[13] This case is no different.

[12] *Id.* at Note 6.

[13] Scandinavian Motors Corp. v. Commissioner of Internal Revenue, CTA Case No. 7269, March 26, 2008; Bovis Lend Lease Projects Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 6825, August 23, 2007; Commissioner of Internal Revenue v. Maruka Enterprises, Inc., CTA EB Case No. 105, June 1, 2006; Guoco Holdings (Phils.) v. Commissioner of Internal Revenue, CTA Case No. 6122, August 31, 2005; Maruka Enterprises, Inc. v. Commissioner of Internal Revenue, CTA Case No. 5977, February 2, 2005.

It due to the foregoing reasons that I **VOTE** to **DENY** the Petition and **AFFIRM** the Court in Division's Assailed Decision and Resolution.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice