REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

HOYA GLASS DISK PHILIPPINES, INC.
Respondent.

CTA *EB* NO. 1473
(CTA Case No. 8115)

x--------------------------------------x

HOYA GLASS DISK PHILIPPINES, INC.
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1474
(CTA Case No. 8115)

Present:

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

Promulgated:

JUN 04 2018 9:55 a.m.

x- x

AMENDED DECISION

MANAHAN, *J.*:

This resolves Hoya Glass Disk Philippines, Inc.'s (Hoya Glass) Motion for Reconsideration[1] and the Commissioner of Internal Revenue's (CIR) Motion for Partial Reconsideration,[2] both filed on December 21, 2017. The parties assail the

[1] *Rollo*, pp. 183-200.
[2] *Rollo*, pp. 201-209.

Decision of the Court *En Banc* dated November 17, 2017, which disposed of the case, as follows:

> **WHEREFORE**, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit. The Assailed Decision and Resolution in CTA Case No. 8115 are hereby **AFFIRMED**.
>
> **SO ORDERED**.[3]

Hoya Glass' Motion for Reconsideration

Hoya Glass argues that the Court should have ruled that the waivers are void and the CIR's period to assess has already prescribed following the Supreme Court rulings in *Commissioner of Internal Revenue v. Philippine Daily Inquirer* (*Inquirer*),[4] and *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.* (*STI*)[5], which allegedly modified the ruling in *Commissioner of Internal Revenue v. Next Mobile, Inc.* (*Next Mobile*)[6]; and, that Hoya Glass should not be estopped from questioning the validity of the waivers.

Hoya Glass also argues that the Court should have ruled that the delegation fees were paid by petitioner to Hoya Corporation for services rendered outside the Philippines, and therefore not subject to final withholding tax (FWT).

Finally, Hoya Glass also questions the simultaneous imposition of deficiency and delinquency interests on the ground that the same is contrary to law, excessive and oppressive.

CIR's Motion for Partial Reconsideration

The CIR states that the Court erred in ruling that his right to assess for deficiency FWT covering the period April to August 2014 has prescribed. The CIR argues that the assessment is not for deficiency FWT as a taxpayer, but as a penalty on an agent of the government for non-withholding and non-remittance, or for failure to comply with the withholding tax provision. *em*

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[3] *Rollo*, p. 168.
[4] G.R. No. 213943, March 22, 2017.
[5] G.R. No. 220835, July 26, 2017.
[6] G.R. No. 212825, December 7, 2015.

Ruling of the Court

At the outset, the Court *En Banc* notes that the parties' Motions for Reconsideration are mere reiteration or amplification of the arguments previously raised in their respective Petitions for Review, and which were already considered and passed upon in the assailed Decision.

However, the Court *En Banc* will address the argument raised by Hoya Glass with respect to the applicability of Supreme Court rulings in *Inquirer* and *STI*, as against the ruling in *Next Mobile.*

In rendering the assailed Decision, the Court *En Banc* was certainly not unaware of the pronouncements in *Inquirer* and *STI* as they merely reiterate the doctrines[7] laid down in earlier cases with respect to the requirements of a valid waiver, with emphasis on the rule that the Bureau of Internal Revenue (BIR) cannot hide behind the doctrine of estoppel to cover its failure to comply with its own issuances. However, the Court finds that the factual milieu in *Next Mobile vis-à-vis Inquirer* and *STI* are significantly different that it would be inappropriate to conclude that *Inquirer* and *STI* have set aside the "*in pari delicto*" rule enunciated in *Next Mobile*, as argued by Hoya Glass.

Inquirer is emphatic in its finding that the defective waivers therein pertain to the BIR's failure to comply with Revenue Memorandum Order No. (RMO) 20-90 and Revenue Delegation Authority Order No. (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.*" Similarly, in *STI*, other than the fact that the signatory to the three waivers had no notarized written authority from the corporation's board of directors, and that the waivers did not specify the kind of tax and the amount of tax due, the period for the CIR to assess the taxpayer for deficiency taxes had already prescribed at the time when the first waiver took effect.

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[7] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010; *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*, G.R. No. 187589, December 3, 2014; and *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

On the other hand, in *Next Mobile*, the validity of the defective waivers were upheld by the Supreme Court 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 BIR in failing to comply with its rules on waivers, the Supreme Court observed that Next Mobile Inc. actually executed five (5) defective waivers. By reason of such waivers, the BIR was effectively induced to delay the 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."

Next Mobile as well as *Inquirer* and *STI* apply to specific instances where the factual backdrop so justify. The doctrines involved in those cases do not call for a sweeping conclusion that one or the other constitutes a general rule applicable to all circumstances.

Thus, the Court *En Banc* reiterates its discussion on the applicability of *Next Mobile* to the instant case, *to wit:*

> It is noted that Hoya Glass never raised the validity of waivers when it filed its protest and supplemental protest during the administrative claim. Hoya Glass never questioned the validity of the waivers before the BIR, as well as the prescription of the CIR's right to assess Hoya Glass for deficiency taxes. Only upon its frustration after the administrative claim did it realize to raise the said matter before this Court. Hoya Glass 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. As correctly observed by the Court in Division:
>
> > Note that petitioner voluntarily executed and submitted the subject Waivers, one after the other and never raised a single objection thereto, only to impugn their validity after the issuance of the assessment on the ground that its own representative had no authority to sign the Waivers. The sly approach was obviously intended to escape tax liability for it was highly incredible that petitioner was unaware of the requirements

> of a valid Waiver since it already secured the services of counsel from the start of the BIR audit. Significantly, the signatories in the said Waivers were not mere employees but responsible ranking officers of petitioner.
>
> For obvious reasons, petitioner should not be allowed to benefit from its own wrongdoing and should be deemed estopped from questioning the validity of the Waivers only after the assessment against it was issued.

In the present case, some of the waivers were not dated and all the waivers executed failed to present the authorities of the signatories therein. Later on, the authorities of the representatives who signed the waivers were questioned by Hoya Glass itself, the very same entity that cause[d] said representatives to sign such in the first place. Thus, it is clear that Hoya Glass violated RMO 20-90, which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials. Hoya Glass actually executed five defective waivers, delivered to the BIR one after the other. Following the recent ruling of the Supreme Court in the case of *Next Mobile*, Hoya Glass allowed the CIR to rely on them and did not raise any objection against their validity until the CIR assessed taxes and penalties against it. Thus, Hoya Glass is estopped from questioning the validity of its waivers.

Hence, Hoya Glass cannot now invoke the said argument in order to benefit from its wrongdoing. It is upon this omission subsequent to the execution of waivers that constitute estoppel on the part of Hoya Glass in claiming that the waivers are invalid. This sets this case apart from the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation* (the "*Kudos Metal Case*"), where the Supreme Court noted that there was no positive act on record to show that the taxpayer therein persuaded the BIR to postpone the issuance of an assessment. As stated therein, "there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments."

Records show that there was a reduction in petitioner's tax liabilities contained in the assessment issued by the CIR within the extended period provided in the assailed waivers. The PAN and FAN indicated a total amount of ₱113,124,991.72 as alleged deficiency tax. From the said amount, it was reduced to ₱61,442,120.38. Upon receiving the benefit from the extension of the statute of limitations, Hoya Glass is deemed to have impliedly admitted the validity of the subject waivers. Since it actually benefitted from the extended period, thus, the doctrine of estoppel clearly finds application in the instant case.

Also to emphasize is the fact that the Supreme Court did not overrule the previous rulings, but merely made an exception in *Next Mobile*. It even emphasized that the deficiencies in the waivers in *Next Mobile* were the same as the defects in the waivers in the previous case of *Kudos Metal*, where the Supreme Court ruled that there should be strict compliance with the requirements of a waiver. Nonetheless, the Supreme Court explained in *Next Mobile* that since both parties are at fault, despite having the same defects in the waivers in *Kudos Metal Case*, the validity of these waivers in *Next Mobile* must be upheld.

On the other hand, BIR has its own faults too, *viz:*

> 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 to 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.

Vis-à-vis the five Waivers it received from Hoya Glass, the BIR has failed five times to perform its duties in relation thereto. The BIR allowed Hoya Glass 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 to follow the procedure dictated therein.[8]

Thus, the Court *En Banc* finds no reason to modify or reverse its assailed Decision.

However, with respect to the imposition of deficiency and delinquency interests, the same should be modified in view of the effectivity of Republic Act No. 10963 or Tax Reform for Acceleration and Inclusion (TRAIN), which became effective on January 1, 2018. Under TRAIN, Section 249 on interest was amended and now provides:

> SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment therefor, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> (1) The amount of the tax due on any return to be filed, or
> (2) The amount of the tax due for which no return required, or
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be

[8] *Rollo*, pp. 163-166.

> assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.
>
> (D) *Interest on Extended Payment.* – If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid. (*Underscoring supplied*)

In line with the amendments above, beginning January 1, 2018, the applicable rate has been reduced to 12%[9] from 20% and the simultaneous imposition of deficiency and delinquency interests has been prohibited.

WHEREFORE, the Motion for Reconsideration filed by Hoya Glass Disk Philippines, Inc. and the Motion for Partial Reconsideration filed by the Commissioner of Internal Revenue are **DENIED** for lack of merit.

The Decision dated March 8, 2016 in CTA Case No. 8115 is **AFFIRMED** with modifications on the computation of deficiency and delinquency interests pursuant to the TRAIN amendments. Accordingly, the dispositive portion of the March 8, 2016 Decision is modified to read as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent's deficiency VAT assessment against petitioner for FY 2005 in the amount of ₱529,797.79 is hereby **CANCELLED AND WITHDRAWN**. However, respondent's deficiency IT and FWT assessments against petitioner for FY 2005 are hereby **AFFIRMED WITH MODIFICATIONS**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of

[9] Double the legal interest rate for loans or forbearance of any money as set by the Bangko Sentral ng Pilipinas. Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 dated June 21, 2013 fixed the rate of interest for loan or forbearance of money at six percent (6%)/

THIRTY MILLION SIX HUNDRED NINETY-EIGHT THOUSAND EIGHT HUNDRED FORTY-SIX PESOS AND 29/100 (₱30,698,846.29) representing basic deficiency IT and FWT and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended.

In addition, petitioner is hereby **ORDERED TO PAY** deficiency interest in the amount of **₱62,435,716.88** and delinquency interest in the amount of **₱140,901,417.92** imposed under Section 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	Income Tax	FWT	Total
Basic	₱ 903,148.69	₱ 23,655,928.34	₱ 24,559,077.03
25% Surcharge	225,787.17	5,913,982.09	6,139,769.26
TOTAL	**₱1,128,935.86**	**₱ 29,569,910.43**	**₱ 30,698,846.29**
Deficiency Interest			
Income Tax - 7/15/2005[10] to 12/31/2017 (₱903,148.69 x 20% x 12.4712 yrs.)	2,252,669.59		
Final Withholding Tax - 4/15/2005[11] to 12/31/2017 (₱23,655,928.34 x 20% x 12.7205 yrs.)		60,183,047.29	**62,435,716.88**
Subtotal	₱ 3,381,605.45	₱ 89,752,957.72	**₱ 93,134,563.17**
Delinquency Interest			
Income Tax - 6/10/2010[12] to 12/31/2017 (₱3,381,605.45 x 20% x 7.5644 yrs.)	5,115,963.25		
Final Withholding Tax - 6/10/2010[13] to 12/31/2017 (₱89,752,957.71 x 20% x 7.5644 yrs.)		135,785,454.67	**140,901,417.92**
TOTAL	**₱8,497,568.70**	**₱225,538,412.39**	**₱234,035,981.09**

Furthermore, petitioner should be held liable to pay delinquency interest at the rate of 12%, which is double the legal interest rate for loans or forbearance of any money, on the total unpaid amount including basic deficiency income tax and final withholding tax, surcharge and deficiency interest as computed above in

[10] Section 77(B) of the NIRC of 1997, as amended.
[11] Sec. 2.58 of Revenue Regulations No. 2-98, as amended by Sec. 5 of Revenue Regulations No. 17-03.
[12] Date of Receipt of the Letter from BIR Regional Director Rodita B. Galanto dated April 29, 2010, Exhibit "K", CTA Case No. 8115, Docket, Vol. 4, pp. 1764-1766.
[13] *Id.*

the aggregate amount of ₱93,134,563.17, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **HOYA GLASS DISK PHILIPPINES, INC.,** Respondent.	**CTA EB NO. 1473** (CTA Case No. 8115)

x- -x

HOYA GLASS DISK PHILIPPINES, INC., Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1474** (CTA Case No. 8115) *Present*: **DEL ROSARIO**, *PJ,* **CASTAÑEDA**, JR., **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.* Promulgated: JUN 04 2018 9:55 a.m.

x- x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying the Motion for Reconsideration filed by Hoya Glass Disk Philippines, Inc. (HGDPI) and the Motion for Partial Reconsideration filed by Commissioner of

Internal Revenue (CIR) for lack of merit. With due respect, however, I cannot give my assent to the *ponencia's* imposition of interest on the tax liability of HGDPI, as follows:

1) The imposition of deficiency interest on income tax at the rate of 20%, from July 15, 2005 to December 31, 2017, and on final withholding tax at the rate of 20% from April 15, 2005 to December 31, 2017;

2) The imposition of delinquency interest for income tax and final withholding tax at the rate of 20% from June 10, 2010 to December 31, 2017; and

3) The imposition of delinquency interest at the rate of 12%, which is double the legal interest rate for loans or forbearance of any money, on the total unpaid amount including basic deficiency income tax and final withholding tax, surcharge and deficiency interest, in the aggregate amount of P93,134,563.17, computed from January 1, 2018 until full payment thereof.

I submit that the pertinent provisions of Republic Act (RA) No. 10963 or otherwise known as the "Tax Reform for Acceleration and Inclusion", which took effect on January 1, 2018, should be applied in determining the amount of HGDPI's tax liability.

Deficiency interest on tax is based on law. When the law is amended during the pendency of a case, and there being a specific provision as to when the amendment becomes effective, there is no reason for the Court not to apply the law as amended.

In the consolidated cases of *Republic of the Philippines vs. Hon. Jesus M. Mupas,*[1] *Republic of the Philippines vs. Philippine International Air Terminals Company, Inc.,*[2] *Takenaka Corporation and Asahikosan Corporation vs. Republic of the Philippines,*[3] *Philippine International Air Terminals Co., Inc. vs. Republic of the Philippines,*[4] the Supreme Court imposed the amended rate of interest immediately upon the effectivity of the corresponding amendment despite the fact that the purported cause of action has

[1] G.R. No. 181892, September 8, 2015.
[2] G.R. No. 209917, September 8, 2015.
[3] G.R. No. 209696, September 8, 2015.
[4] G.R. No. 209731, September 8, 2015.

arisen before the amendment, and notwithstanding the absence of any provision stating that it should be applied either retroactively or prospectively. There was a "cut off" date made, however, that is – by applying the old rate before the effectivity of the amendment and the new rate after such effectivity.

It is interesting to note further that in ***Mupas, etc.***, only the imposable rate of interest was amended, without any modification either on the nature of interest that may be imposed or on the manner by which such interest should be computed. Thus, from 12% under the old law, the interest was simply reduced to 6% upon the effectivity of the new law.

In contrast, RA No. 10963 (TRAIN Law) made a substantial modification on the rate of interest, the nature of interest that may be imposed and the mode by which interest may be computed. A comparison of the provision of Section 249 on interest under the NIRC <u>and</u> its amendment under the TRAIN Law would readily highlight the radical incongruity, *viz.*:

Section 249, NIRC of 1997, as amended	**Section 249, NIRC, as amended by the TRAIN Law**
Deficiency Interest **20% per annum,** from the date prescribed for its payment until the full payment thereof	**Deficiency Interest** **12% per annum**, from the date prescribed for its payment until: (i) the full payment thereof; **<u>or (ii) upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier</u>** Provided, that **<u>in no case shall the deficiency and delinquency interest be imposed simultaneously</u>**
Delinquency Interest **20% per annum,** until fully paid	**Delinquency Interest** **12% per annum,** until fully paid

From the foregoing, it is readily apparent that, Section 249 of the NIRC of 1997, as amended by RA No. 10963 (TRAIN law), incorporates three (3) provisos that cannot be applied without setting aside the original version of Section 249 of the NIRC of 1997: *[initials]*

First, the TRAIN law prescribes 12% interest, which is double the legal interest rate for loans or forbearance of money, while the old provision prescribes the rate of 20% per annum;

Second, the deficiency interest is computed from date prescribed for its payment until: (i) the full payment thereof; or **(ii) issuance of a notice and demand by the CIR, whichever comes earlier**. The old version confined its computation strictly from the date prescribed for its payment until the full payment thereof; and

Third, the TRAIN law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows.

Since there is no way to reasonably apply a cut-off date on deficiency interest because of the strikingly opposing rule on rate of interest and mode of computation between the old provision and the new provision, the logical approach is to apply the amended rate consistent with the intent of RA No. 10963 to make it effective on January 1, 2018.

All told, I **VOTE** to: (i) **DENY** the Motions for Reconsideration filed by the Commissioner of Internal Revenue and Hoya Glass Disk Philippines, Inc., both for lack of merit; (ii) **AFFIRM** the assailed Decision of the Court *En Banc* with **MODIFICATION** relating to the imposition of deficiency and delinquency interest; and, (iii) **ORDER** Hoya Glass Disk Philippines, Inc. to **PAY** the Bureau of Internal Revenue the amount of P30,698,846.29 representing basic deficiency income tax and final withholding tax and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

	Basic	**Surcharge**	**Total**
Income Tax	P 903,148.69	P 225,787.17	P 1,128,935.86
Final Withholding Tax	23,655,928.34	5,913,982.09	29,569,910.43
Total	**P 24,559,077.03**	**P 6,139,769.26**	**P30,698,846.29**

In addition, **ORDER** Hoya Glass Disk Philippines, Inc. to **PAY**:

a) **Deficiency interest** at the rate of 12% per annum on the basic deficiency income tax and final withholding tax, **computed from the date prescribed for payment as indicated below until April 20, 2009, the date of Hoya Glass Disk Philippines, Inc.'s receipt of the Final Assessment Notice and Formal Letter of Demand, dated April 2, 2009**, pursuant to Section 249(B) of the NIRC of 1997, as amended by RA No. 10963:

TAX TYPE	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	P 903,148.69	July 15, 2005
Final Withholding Tax	P 23,655,928.34	April 20, 2005

b) **Delinquency interest** at the rate of 12% per annum of the total amount of P30,698,846.29 and on the 12% deficiency interest which have accrued as aforestated in item (a) above, **computed from May 4, 2009, the due date appearing in the Final Assessment Notice and Formal Letter of Demand, until the amount is fully paid**, pursuant to Section 249(C) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

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(CTA CASE No. 8115)

-versus-

HOYA GLASS DISK PHILIPPINES, INC.,
Respondent.

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HOYA GLASS DISK PHILIPPINES, INC.,
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MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
JUN 04 2018 9:55 a.m.

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DISSENTING OPINION

MINDARO-GRULLA, J.:

With due respect to my esteemed colleagues, it is my submission to grant Hoya Glass Disk Philippines, Inc.'s Motion for Reconsideration.

After re-assessment of the case and taking into consideration the fairly recent pronouncement of the Supreme Court with respect to the same issue herein, it is my stand that the waivers in the instant case are void for failure to strictly comply with the requirements set for a valid waiver of prescriptive period to assess a taxpayer.

It must be noted that the *in pari delicto* rule applies only in each and every case where facts and circumstances are on all fours to those in *Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.)* (the *"Next Mobile Case").*[1] In fact, the *Next Mobile Case* itself says that its ruling was to be the exception due to the "peculiar circumstances" of the case.[2]

The rule on assessment is subject to a three-year prescriptive period[3] with exceptions, one of which is a valid waiver of the said period under Section 222(b) of the National Internal Revenue Code (NIRC), RMO No.20-90 and RDAO No. 05-01. To be valid as to extend the original 3-year period to assess, the waiver must be signed by the taxpayer, followed by the CIR or his authorized revenue officer indicating the acceptance of such waiver. The date of such acceptance must also be specifically indicated.[4] Also, the waiver should not be accepted by the concerned BIR office and official unless duly notarized. These requirements are mandatory and must be strictly followed. Failure to comply with any of the requisites renders a waiver defective and ineffectual.

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[1] G.R. 212825, December 7, 2015.
[2] *Ibid.,* p. 10.
[3] Section 203 of the National Internal Revenue Code: Period of Limitation Upon Assessment and Collection. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
[4] *Commissioner of Internal Revenue vs. Tektite Insurance Brokers, Inc.,* CTA EB 1544, January 17, 2018.

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In a fairly recent case of *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc. (the "STI Case")*,[5] the Supreme Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO No.20-90 and RDAO No. 05-01.[6] Thus:

> "In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, the Court declared the waiver invalid because: (1) it did not specify the date within which the BIR may assess and collect revenue taxes, such that the waiver became unlimited in time; (2) it was signed only by a revenue district officer, and not the CIR; (3) there was no date of acceptance; and (4) the taxpayer was not furnished a copy of the waiver.
>
> In *Commissioner of Internal Revenue v. FMF Development Corporation*, the waiver was found defective and thus did not validly extend the original three-year prescriptive period because: (1) it was not proven that the taxpayer was furnished a copy of the waiver; (2) it was signed only by a revenue district officer, and not the CIR as mandated by law; and (3) it did not contain the date of acceptance by the CIR, which is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.
>
> In another case, the waivers executed by the taxpayer's accountant were found defective for the following reasons: (1) the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf; (2) the waivers failed to indicate the date of acceptance; and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.
>
> In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*, the Court nullified the waivers because the following requisites were absent: (1) conformity of either the CIR or a duly

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[5] G.R. No. 220835, July 26, 2017.

[6] *Meinan Philippines, Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 8839, First Division, January 18, 2018.

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> authorized representative; (2) date of acceptance showing that both parties had agreed on the waiver before the expiration of the prescriptive period; and (3) proof that the taxpayer was furnished a copy of the waiver.
>
> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90." (Underlining Supplied.)

Applying the foregoing rules and jurisprudence, the waivers in question were defective and did not validly extend the original three year prescriptive period.

The first waiver executed on September 26, 2007 was defective because it was signed by Mr. Sinichi Fukuma, Hoya Philippines' Administration General Manager, despite the absence of any authorization in writing by Hoya Glass Glass' Board of Directors and a duly notarized special power of attorney to that effect. On the other hand, the same waiver was signed and accepted by the Assistant Revenue District Officer, Ms. Venus T. Caticales, who has no authority under RMO 20-90, as the amount of tax case involved is more than ₱1,000,000.00. Also, the date of acceptance of the waiver by the CIR was not indicated in therein. Lastly, the fact of receipt by Hoya Glass of its file copy was not indicated in the first waiver.

The second waiver dated October 9, 2007 also does not comply with the requirements of RMO 20-90 and RDAO 05-01. The waiver was signed by Mr. Fukuma despite the absence of a notarized authority in writing executed by Hoya Glass' Board of Directors. The date of acceptance by the CIR was not also indicated in the waiver. While it appears that the waiver itself was notarized, the acknowledgement portion is defective since it does not indicate any competent document exhibited to verify Mr. Fukuma's identity and the fact of receipt by Hoya Glass of its file copy was likewise omitted in the waiver.

The third waiver dated March 28, 2008 was also defective because there was no notarized written authority allowing Mr. Kazuhiko Suzuki to sign the waiver on behalf of Hoya Glass. There was again no date of acceptance in the said waiver and the fact of receipt by Hoya Glass of its file copy was likewise omitted.

The fourth waiver dated February 12, 2009 also does not comply with the requirements of RMO 20-90 and RDAO 05-01. It was signed by Mr. Fukuma, but there was no notarized authority in writing executed by Hoya Glass' Board of Directors. Also, no date of acceptance by the CIR appears in the said waiver and the fact of receipt by Hoya Glass of its file copy was not indicated in the waiver.

The fifth waiver dated September 18, 2009 also does not comply with the requirements of RMO 20-90 and RDAO 05-01. Aside from the fact that the date of acceptance of the waiver by the CIR does not appear in the waiver, there is no written authorization from Hoya Glass authorizing Mr. Hunihiro Kato to waive the defense of prescription on its behalf.

For unknown reasons, the CIR's dates of acceptance were not indicated in the spaces provided for all the waivers in question, rendering the waivers invalid and with no force and effect.[7] As laid down in *Commissioner of Internal Revenue vs. FMF Development Corporation*,[8] the proper procedure in the execution of a valid waiver is that "before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed

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[7] *Commissioner of Internal Revenue vs. Tektite Insurance Brokers, Inc., CTA EB 1544, January 17, 2018.*
[8] G.R. No. 167765, June 30, 2008.

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form, duly notarized, and executed by the taxpayer or his duly authorized representative."[9]

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.[10] The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. 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. 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.[11]

In the case at bar, the income tax return was filed by Hoya Glass on July 11, 2005 for its fiscal year 2005, thus, the CIR had until July 11, 2008 to assess Hoya Glass of its alleged deficiency income tax. As to the alleged VAT deficiency, the last day for the CIR to assess the last quarter covered by the assessment was on April 25, 2008.[12] For the final withholding tax, the last day for the CIR to assess the last month covered by the assessment was on April 14, 2008.[13] Without valid waivers to extend the said deadlines, the assessment on April 20, 2009 must be cancelled.

In view of the foregoing, I vote to **DENY** the Motion for Reconsideration filed by the Commissioner of Internal Revenue for lack of merit, to **GRANT** the Motion for Reconsideration filed by Hoya Glass Disk Philippines, Inc. and **CANCEL** the assessment and the Final Decision on Disputed Assessment for alleged deficiency income tax, value-added tax and final withholding tax against Hoya Glass

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[9] Cited in *Tektite, Supra* note 7.
[10] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December16, 2004, citing *Ouano vs. Court of Appeals*, G.R. No. 129279, 4 March 2003, 398 SCRA 525, citing *People vs. Donato*, G.R. No. 72969, 5 June 1991, 198 SCRA 130.
[11] *Ibid.*
[12] Division Decision, p.14-15, *En Banc* Docket, p. 35-36.
[13] *Ibid.*

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Disk Philippines, Inc. for fiscal year 2005 in the aggregate amount of ₱61,442,120.38.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice