REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

DOLE PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 1190
(CTA Case No. 8155)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:

JUL 13 2016 2:31 p.m.

x--x

AMENDED DECISION

BAUTISTA, J:

For resolution is petitioner's Motion for Reconsideration[1] filed on March 1, 2016; with respondent's Comment (To Petitioner's Motion for Reconsideration)[2] ("Comment") filed on April 29, 2016.

On February 4, 2016, the Court *En Banc* promulgated a Decision[3] declaring petitioner's right to assess as prescribed due to the invalidity of the four (4) waivers. The dispositive portion reads as follows:[4]

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[1] *Rollo, CTA EB No. 1190, March 1, 2016 Motion for Reconsideration ("MR")*, pp. 227-236.
[2] *Id., Comment (To Petitioner's [MR])*, pp. 240-249.
[3] *Id., February 4, 2016 Decision*, pp. 190-220, with annexed Dissenting Opinion; with all Associate Justices concurring and with Presiding Justice Roman G. Del Rosario dissenting.
[4] *Id.* at 212.

> **WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision promulgated on March 21, 2014 and the Resolution promulgated on June 9, 2014 by the Second Division are hereby **AFFIRMED.**
>
> **SO ORDERED.**

In her Motion for Reconsideration, petitioner avers that she validly entered into a written agreement to extend the assessment period; that respondent is estopped from belatedly raising procedural defects during the administrative audit investigation of its deficiency Income and Sales Taxes for taxable year 1986; and that the recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (G.R. No. 212825, December 7, 2015) ("Next Mobile")* applies, as it affirms her previous arguments on estoppel.

On April 7, 2016, the Court ordered respondent to file its comment thereon within ten (10) days from receipt.[5]

In its Comment, respondent claims that consent and an object certain are essential requisites of a contract, the absence of which renders the agreement void; and that a void contract cannot be ratified nor can the right to set up the defense of illegality be waived.

The Court *En Banc* finds reasonable grounds to reverse its Decision dated February 4, 2016.

Petitioner's right to assess respondent for deficiency Income and Sales Taxes for taxable year 1986 has not yet prescribed.

In the recent Supreme Court case of *Next Mobile,* the Supreme Court declared the Waivers valid and the case was remanded to the Court of Tax Appeals ("CTA") for further proceedings, for reference:[6]

> To be sure, both parties in this case are at fault.
>
> Here, respondent, through Sarmiento, executed *five*

[5] *Rollo, CTA EB No. 1190,* pp. 238-239.
[6] Emphases retained.

Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO [No. 05-01] which requires the presentation of a written and notarized authority to the BIR.

Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO [No.] 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 respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute them, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.

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 [No.] 20-90 and RDAO [No.] 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 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 [No.] 20-90 and RDAO [No.] 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 [No.] 20-90 and RDAO [No.] 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.

In the assailed Decision, the Court *En Banc* found the following:[7]

	1st Waiver	2nd Waiver	3rd Waiver	4th Waiver
Exhibit	"Q"	"Q-1"	"QQ"	"Q-3"
Representative and date of signing				
DOLE	Hernane D. Chua (Assistant Treasurer) August 30, 1989	Hernane D. Chua (Assistant Treasurer) August 21, 1990	Hernane D. Chua (Assistant Treasurer) June 6, 1991	Hernane D. Chua (Assistant Treasurer) February 17, 1993
BIR	No signature	No signature	No signature	No signature
Date of Effectivity	August 21, 1990			
Applicable rules and regulations	1977 NIRC	1977 NIRC; RMO No. 20-90	1977 NIRC; RMO No. 20-90	1977 NIRC; RMO No. 20-90
Extension				
Note at the bottom of page	June 30, 1991	September 30, 1990	June 30, 1991	None
Body of waiver "but not after ___"	September 30, 1990	June 30, 1991	March 31, 1993	December 31, 1993

1. The last day of the period of effectivity of the waivers are inconsistent. The body provides one date in the required phrase "but not after ______ 19__" but the note on the bottom of each waiver provides a different date;

2. There's no proof that the DOLE representative and Assistant Treasurer, Hernane D. Chua, was authorized to sign and execute the waivers; and

3. The waivers were never signed by the CIR or any of his BIR representatives, hence, there is no proof that the CIR willfully entered into these waivers. This applies even to the

[7] *Rollo, February 4, 2016 Decision*, p. 209.

First Waiver since there is a requirement under the *1977 NIRC* that the CIR and the taxpayer must agree in writing.

The factual *milieu* of the *Next Mobile* case is on all fours with the instant Petition for Review. It is clear that while the Waivers executed by the parties suffered certain infirmities, they were deemed valid given that respondent is estopped from questioning said defects or infirmities.

It must be emphasized that respondent voluntarily executed and submitted the subject Waivers, one after the other, never raising any objection thereto, only to impugn their validity before the Court. Therefore, respondent should not be allowed to benefit from its own wrongdoing and should be deemed estopped from questioning the validity of the Waivers.

This doctrine of estoppel is based on public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his/her/its own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[8] It has been applied by the Supreme Court wherever and whenever special circumstances of a case so demand.[9]

Considering that petitioner's right to assess is deemed validly extended until December 31, 1993 through the Waivers executed and that an assessment was issued by petitioner on November 24, 1993, the same was made within the extended prescriptive period.

Respondent validly availed of the benefits under the Tax Amnesty Program.

In the recent Supreme Court case of *CS Garment Inc. v. Commissioner of Internal Revenue ("CS Garment")*[10], the Highest Tribunal had the opportunity to define tax amnesty in this wise:

> Tax amnesty refers to the articulation of the absolute waiver by a sovereign of its right to collect taxes and power to

[8] *Megan Sugar Corporation v. Regional Trial Court of Iloilo, et. al.,* G.R. No. 170352, June 1, 2011, 650 SCRA 100.
[9] *Id.*
[10] G.R. No. 182399, March 12, 2014.

impose penalties on persons or entities guilty of violating a tax law. Tax amnesty aims to grant a general reprieve to tax evaders who wish to come clean by giving them an opportunity to straighten out their records. In 2007, Congress enacted *R.A. [No.] 9480*, which granted a tax amnesty covering "all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005."

The pertinent law and rules are *Republic Act ("RA") No. 9480*[11] and *Department Order ("DO") No. 29-07*[12], as follows:[13]

RA No. 9480

SECTION 1. *Coverage.* - There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.

SEC. 2. *Availment of the Amnesty.* - Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the [BIR] a notice and Tax Amnesty Return accompanied by a [SALN] as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (["IRR"]) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.

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SEC. 6. *Immunities and Privileges.* - Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

1. The taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the [1997 NIRC], as amended, arising from the

[11] *"An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years,"* dated July 24, 2006, lapsed into law on May 24, 2007.
[12] *"Implementing Rules and Regulations of Republic Act No. 9480, otherwise known as 'Tax Amnesty Act of 2007,'"* dated August 15, 2007, effective November 7, 2007.
[13] Underscoring ours.

failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

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SEC. 7. *When and Where to File and Pay.* - The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an acceptance of payment form authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment.

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SEC. 15. *Implementing Rules and Regulations.* - The Secretary of Finance shall, in coordination with the Commissioner of Internal Revenue, promulgate and publish the necessary rules and regulations within sixty (60) days from the effectivity of this Act.

DO No. 29-07

SECTION 1. *Title and Purpose.* These rules and regulations to be known and cited as the [IRR] of [RA] No. 9480. "Otherwise known as [']Tax Amnesty Act of 2007[',"] are hereby promulgated to govern the availment by qualified persons and/or entities of the tax amnesty granted under RA 9480, covering all unpaid internal revenue taxes for the taxable year 2005 and prior years.

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SEC. 3. *Taxes Covered.* The tax amnesty shall cover all national revenue taxes imposed by the National Government for the taxable year 2005 and prior years, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005.

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SEC. 6. *Method of Availment of Tax Amnesty.-*

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1. *Forms/Documents to be filed.*- To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such forms as may be prescribed by the BIR.

b. [SALN] as of December 31, 2005 in such forms, as may be prescribed by the BIR.

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. *Place of Filing of Amnesty Tax Return.* - The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

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3. *Payment of Amnesty Tax and Full Compliance.* Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of or to be accomplished by - the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA No. 9480.

> 4. *Time for Filing and Payment of Amnesty Tax.* - The filing of the Tax Amnesty Return, together with the SALN, and the payment of the amnesty tax shall be made within six (6) months from the effectivity of these Rules.
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> SEC. 10. *Immunities and Privileges.* - Taxpayers who have fully complied with the conditions under RA [No.] 9480 and these rules shall be entitled to the following immunities and privileges:
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> 1. The taxpayer shall be immune from the payments of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the [1997 NIRC], as amended, arising from the failure to pay any and all internal revenue taxes year 2005 and prior years.
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> xxx xxx xxx
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> SEC. 18. *Effectivity.* These Rules shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Based on the foregoing, the Tax Amnesty Program ("TAP") covers all national internal revenue taxes for the taxable year 2005 and prior years that have remained unpaid as of December 31, 2005.

In the case of *CS Garment*, the Supreme Court expounded, as follows:[14]

> Amnesty taxpayers may immediately enjoy the privileges and immunities under the 2007 Tax Amnesty Law, as soon as they fulfill the suspensive conditions imposed therein.
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> A careful scrutiny of the 2007 Tax Amnesty Law would tell us that the law contains two types of conditions - one suspensive, the other resolutory. Borrowing from the concepts under our Civil Code, a condition may be classified as suspensive when the fulfillment of the condition results in the acquisition of rights. On the other hand, a condition may be considered resolutory when the fulfillment of the condition results in the extinguishment of rights. In the context of tax amnesty, the rights referred to are those arising out of the

[14] Underscoring ours.

privileges and immunities granted under the applicable tax amnesty law.

As a suspensive condition to the valid availment of the benefits under the TAP, the taxpayer must submit the following documents, *viz.*:[15]

1. Notice of Availment of Tax Amnesty;

2. SALN attached to the Tax Amnesty Return filed within six (6) months from effectivity of the IRR;

3. For residents, Tax Amnesty Return (BIR Form No. 2116) filed with the Revenue District Officer ("RDO")/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be, within six (6) months from effectivity of the IRR;

4. Payment Form (BIR Form No. 0617); and

5. Proof of payment of tax amnesty to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business, payment shall be made within six (6) months from effectivity of the IRR.

The factual antecedents of the Decision[16] of the Second Division of the CTA dated March 21, 2014 provide that respondent already availed of the benefits under the TAP:[17]

> Thus, on March 6, 2008, petitioner availed itself of the tax amnesty under R.A. No. 9480 by filing with Revenue District Office (RDO) No. 122, Revenue Region No. 17 a Notice of Availment of Tax Amnesty and Tax Amnesty Return (BIR Form 2116). Petitioner's SALN as of December 31, 2005 was also attached thereto accompanied by the Tax Amnesty Payment Form (BIR Form 0617) having the amount of [Php]606,155.00 as payment thereof.

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[15] *CS Garment, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182399, March 12, 2014.
[16] *Records, March 21, 2014 Decision,* pp. 546-561.
[17] *Id.* at 549.

Nonetheless, the Court *En Banc* shall now determine whether respondent has actually complied with the above-stated requirements:

1. *Notice of Availment of Tax Amnesty*

Respondent submitted as evidence its Notice of Availment of Tax Amnesty (Under *RA No. 9480*)[18] dated March 6, 2008, with the attached previous SALN/Balance Sheet, Tax Amnesty Return and Tax Amnesty Payment Form/Acceptance of Payment Form. This was received by the Authorized Agent Bank ("AAB") concerned on March 6, 2008.

2. *Statement of Assets, Liabilities and Networth*

As proof, respondent presented both its Original[19] and Amended[20] SALNs as of December 31, 2005. This was received by the AAB concerned on March 6, 2008.

It must be noted that the taxable year involved is 1986, which is clearly covered by *RA No. 9480* dated July 24, 2006 effective May 24, 2007 and *DO No. 29-07* dated August 15, 2007 effective November 7, 2007; and that on February 22, 2008, *Revenue Memorandum Circular ("RMC") No. 19-2008* was issued by the BIR, setting the deadline for the availment of Tax Amnesty on March 6, 2008, hence, the SALNs were timely filed.

3. *Tax Amnesty Return (BIR Form No. 2116)*

As a requirement for residents, respondent submitted its Tax Amnesty Return For Taxable Year 2005 and Prior Years Pursuant to *RA No. 9480* (BIR Form No. 2116)[21], which was received by the AAB concerned on March 6, 2008, with a Total Amnesty Tax Due of Php606,115.00. This was likewise submitted within the six (6)-month prescriptive period.

4. *Payment Form (BIR Form No. 0617)*

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[18] *Records, Exhibit "A,"* p. 249.
[19] *Id., Exhibit "D,"* p. 253.
[20] *Id.* at 252.
[21] *Id., Exhibit "B,"* p. 250.

For compliance, respondent provided its Tax Amnesty Payment Form (Acceptance of Payment Form) For Taxable Year 2005 and Prior Years Pursuant to *RA No. 9480* (BIR Form No. 0617)[22] with a Total Amnesty Tax Due of Php606,115.00. This was received by the AAB concerned on March 6, 2008, hence, filed within the prescriptive period.

5. *Proof of payment of tax amnesty*

To support its claim of payment, respondent showed its BIR Tax Payment Deposit Slip[23] dated March 6, 2008 to the account of "Bureau of Treasury - BIR" for the total amount of Php606,115.00, payment was made within the six (6)-month prescriptive period.

Having successfully proven compliance with the requirements under *RA No. 9480* and *DO No. 29-07*, the benefits thereunder shall be enjoyed by respondent, *e.g.* immunity from the payment of taxes. Hence, it is generally not liable for failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Respondent is not liable for Income Tax and Sales Tax since these are covered by the Tax Amnesty Program.

Having determined that petitioner validly availed of the benefits under the TAP, the Court now determines whether the taxes assessed are indeed covered by the said program.

In the assessment[24] dated November 24, 1993, petitioner found respondent liable for deficiency Income and Sales Tax, as follows:

Deficiency Income Tax	Php	50,562,398.00
Surcharge (25%)		12,640,599.50
Interest		83,219,386.80
Compromise		15,000.00
Total	**Php**	**146,437,384.30**

[22] *Records, Exhibit "C,"* p. 251.
[23] *Id., Exhibit "E,"* p. 254.
[24] *Id., Exhibits "R" and "R-1,"* pp. 270-271; *BIR Records,* pp. 905-906.

Deficiency Sales Tax	Php	93,963.40
Surcharge (25%)		23,490.85
Interest		160,172.35
Compromise		6,000.00
Total	**Php**	**283,626.60**

Based on *Question 1 of Revenue Memorandum Circular ("RMC") No. 69-2007*[25], the TAP covers (and excludes) the following taxes:[26]

Q-1		**What type of taxes and what taxable period/s are covered by the [TAP] under *RA [No.] 9480* as implemented by *DO [No.] 29-07*?**
A-1		The [TAP] covers all national internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government. Moreover, the time-honored doctrine that ***"No person shall unjustly enrich himself at the expense of another"*** should always be observed.

From the above *RMC* and the doctrine in *CS Garment*, it can be gathered that TAP covers all national internal revenue taxes, including (and excluding) the following:

Includes:

1. Income tax;
2. Estate tax;
3. Donor's tax;
4. Capital gains tax;
5. VAT;
6. Other percentage taxes;
7. Excise taxes; and
8. DST.

Excludes:

1. Withholding taxes; and

[25] *"Classification of Issues Concerning The Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07,"* November 5, 2007.
[26] Emphases retained, underscoring ours.

2. Taxes passed-on and already collected from the customers for remittance to the BIR.

Income Tax is clearly included in the TAP. As to Sales Tax, reference to *Presidential Decree ("PD") No. 1357*[27] will show that this is a type of Other Percentage Tax, which is likewise included in the TAP. Therefore, respondent is immune from payment of Income Tax and Sales Tax for the year 2005 and prior years, including taxable year 1986.

WHEREFORE, petitioners Motion for Reconsideration is hereby **PARTIALLY GRANTED** as to her prayer to reverse and set aside the Court *En Banc*'s Decision promulgated on February 4, 2016; and petitioner's Petition for Review is hereby likewise **PARTIALLY GRANTED** as to her prayer for the reconsideration of the Decision promulgated on March 21, 2014 and the Resolution promulgated on June 9, 2014 by the Second Division of the CTA.

Accordingly, the assailed Decision promulgated on March 21, 2014 and the Resolution promulgated on June 9, 2014 by the Second Division of the CTA, which granted respondent's Petition for Review by reason of prescription of petitioner's right to assess, are hereby **REVERSED** and **SET ASIDE**. Nonetheless, due to respondent's valid availment of the benefits under the Tax Amnesty Program, Assessment Notice Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 dated November 24, 1993 demanding payment in the total amount of One Hundred Forty Six Million Seven Hundred Twenty One Thousand Ten and 90/100 Pesos (Php146,721,010.90), inclusive of interest, representing alleged deficiency Income and Sales Taxes for the taxable year 1986 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[27] *"Amending Section 195 of the National Internal Revenue Code of 1977 To Provide for a More Realistic and Equitable Sales Tax System for Automobiles,"* dated March 21, 1978, effective April 1, 1978; *Section 195 of the 1977 NIRC* pertains to Percentage Tax on Sales of Automobiles.

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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 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* -

DOLE PHILIPPINES, INC.,
Respondent.

CTA EB NO. 1190
(CTA Case No. 8155)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:
JUL 13 2016 2:31 p.m.

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CONCURRING & DISSENTING OPINION

DEL ROSARIO, PJ:

I assent to the *ponencia* of my esteemed colleague in declaring that petitioner's right to assess is extended until December 31, 1993. The Waivers, which failed to comply strictly with the requirements of Revenue Memorandum Order No. 20-90 are, nonetheless, valid as respondent, by its own acts, is estopped from questioning its infirmities, consistent with the pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Next Mobile Inc.*[1] This is in line with the position I have taken in my earlier Dissenting Opinion on the assailed Decision of the Court *En Banc* dated February 4, 2016.

The point of my dissent relates to the *ponencia's* position in cancelling the disputed deficiency income tax and sales tax assessments in view of the alleged availment by respondent of the

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

benefits under the Tax Amnesty Program *[Republic Act (RA) No. 9480]*.[2]

With due respect, I submit that the records of this case are not sufficient to allow verification of the correctness of the tax amnesty payment made by respondent.

Section 6 of RA 9480 provides immunities and privileges, such as immunity from payment of taxes as well as additions thereto and the appurtenant penalties under the National Internal Revenue Code,[3] to those who availed of the tax amnesty and have fully complied with all its conditions.[4] All the immunities and privileges offered under RA 9480 shall not, however, apply where the person failed to file a Statement of Assets, Liabilities and Networth *(SALN)*

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[2] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty On All Unpaid Internal Revenue Taxes Imposed by the National Government For Taxable Year 2005 and Prior Years.

[3] SEC. 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

1. The taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

2. The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

3. The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: Provided, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof.

[4] Id.

and a Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more.[5]

Department Order No. 29-07 issued by the Secretary of Finance on August 15, 2007, known as the *Implementing Rules and Regulations (IRR) of RA 9480* requires the following forms/documents to be filed relative to the availment of the tax amnesty, *viz.*:

> "SEC. 6. *Method of Availment of Tax Amnesty.* –
>
> 1. *Forms/Documents to be filed.* – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:
>   a. **<u>Notice of Availment in such forms as may be prescribed by the BIR</u>**.
>   b. **<u>Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such forms, as may be prescribed by the BIR</u>**.
>   c. **<u>Tax Amnesty Return in such form as may be prescribed by the BIR</u>**.
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> 2. *Place of Filing of Amnesty Tax Return.* – xxx
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> 3. *Payment of Amnesty Tax and Full Compliance.* - Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.
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>   The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of-or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.
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>   **<u>The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment</u>**. The completion of these requirements shall be deemed full compliance with the provisions of RA 9480."

[5] Id.

Relatedly, Revenue Memorandum Circular (RMC) No. 69-07 provides:

"Q-13 What are the procedures for availment?
A-13 A person or entity who would wish to avail of the Tax Amnesty shall follow these procedures:

a. Accomplish and prepare for submission the following forms:
   a.1 **NOTICE OF AVAILMENT OF TAX AMNESTY FORM**, to be filled up by the person who will avail of the tax amnesty (such form can be presented to the BIR representative for proper computation or taxpayer himself can compute for the amnesty amount);
   a.2 **Statement of Assets, Liabilities and Networth (SALN) as of Balance Sheet date and/or <u>the Balance Sheets, both original and amended, in case where the taxpayer had previously filed his/its Balance Sheet together with the income tax return for 2005</u>**;
   a.3 **Tax Amnesty Return (BIR Form No. 2116)**;
   a.4 **Payment Form (BIR Form No. 0617)**;
   a.5 Such other documentary requirements that may be required, as discussed in subsequent paragraphs." *(Emphasis supplied)*

As to the amount of tax amnesty, RMC Nos. 69-07 and 55-07 provide:

<u>RMC No. 69-07</u>

"Q-10 What is the basis of computing the tax amnesty and what are the tax amnesty rates prescribed therefor?

A-10 a. For those qualified taxpayers who have no previously filed statements of assets and liabilities/balance sheet as of December 31, 2005, the tax amnesty payment shall be computed based on higher amount between the five percent (5%) of the networth as of December 31, 2005 (including fiscal year ending in any month of 2005) as declared in the SALN and the minimum amnesty payments as presented in the following schedule of tax amnesty computation: xxx

b. For those qualified taxpayers who have filed with BIR's authorized agents their **SALN/balance sheet <u>together with their income tax returns for taxable year 2005</u>** and who desire to avail of the tax amnesty, **they shall amend their previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax** equal to five percent (5%) based on the resulting increase in the networth or the minimum amount prescribed by the Tax Amnesty Law for each category of taxpayer, whichever is higher. (Refer to the schedule of minimum payments in the table above).

xxx xxx xxx

<u>RMC No. 55-07</u>

"SEC. 7. Tax Amnesty Rates. xxx

4. Taxpayers who filed their **balance sheet/SALN, together with their income tax returns for 2005**, and who desire to avail of the tax amnesty under this Act by amending such previously filed statements thereby including still undeclared assets and/or liabilities	5% based on the resulting increase in networth or the minimum absolute amounts of amnesty tax prescribed above, whichever is higher

(Emphasis supplied)

Judicious review of the case records discloses that the documents presented by the respondent before the Court in Division in support of its application for tax amnesty are only confined to the following, to wit:

1. Notice of Availment of Tax Amnesty;[6]
2. Tax Amnesty Return (BIR Form 2116);[7]
3. Tax Amnesty Payment Form (BIR Form 0617);[8]
4. Original and Amended Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005;[9]
5. Validated BIR Tax Payment Deposit Slip.[10]

The foregoing documents are inadequate. While respondent presented a Certification signed by Cesar C. Sarmiento, the Asst. Head, Tax Amnesty Task Force, stating that it has complied with all the documentary requirements set forth under Sections 6, 7 & 8 of Department Order 29-07,[11] said Certification could not be taken as gospel truth sans the documentary basis thereof. At the very least, respondent should have presented before the Court in Division the

[6] Exhibit "A", CTA Division Docket, p. 249.
[7] Exhibit "B", CTA Division Docket, p. 250.
[8] Exhibit "C", CTA Division Docket, p. 251.
[9] Exhibit "D", CTA Division Docket, pp. 252 & 253.
[10] Exhibit "E", CTA Division Docket, p. 254.
[11] Exhibit "F", CTA Division Docket, p. 255.

Balance Sheet together with its Income Tax Return for 2005 as mandated in the aforequoted RMCs.

Truly, the presentation of such documents is indispensable to show full compliance with the mandatory documentary requirements and consequently allow verification of the propriety of the tax amnesty payment. **In this case, respondent based its tax amnesty payment on the resulting increase in its networth**. The resulting increase in networth is the difference between the networths shown in the original and amended SALNs, both filed by respondent on **March 6, 2008**. To my mind, the original SALN presented by respondent is insufficient since what RMC Nos. 69-07 and 55-07 require is the **Balance Sheet/SALN together with the ITR for 2005** previously filed by the taxpayer.

For failure of respondent to present the required Balance Sheet together with its ITR for 2005, the Court is deprived of the opportunity to verify whether the networth reflected by petitioner in its original SALN *(which interestingly was filed simultaneous with its amended SALN)* is correct. In the absence of the Balance Sheet together with its ITR for 2005, the Court could not ascertain whether there was understatement in respondent's networth which could be a valid basis for disallowing the benefits and immunities pursuant to the last paragraph of Sec. 6 of RA 9480.

In view of the foregoing, I vote to **GRANT** petitioner's Motion for Reconsideration. Accordingly, I reiterate my position to **UPHOLD** Assessment Nos. FAS-2-86-93-005023 and FAS-5-86-93-005024 issued by the Commissioner of Internal Revenue.

ROMAN G. DEL ROSARIO
Presiding Justice