REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1289** (CTA Case No. 8476)
- *versus* -	Present: ***Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas,*** *and* ***Ringpis-Liban, JJ.***
ASIAN TRANSMISSION CORPORATION, *Respondent.*	Promulgated: AUG 09 2016 3:00 p.m.

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DECISION

BAUTISTA, J:

This is a Petition for Review pursuant to *Section 3(b)*[1], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* filed by petitioner Commissioner of Internal Revenue ("CIR") before the Court of Tax Appeals ("CTA") *En Banc* praying for the reversal of the

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[1] *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* provides:

Sec. 3. *Who May Appeal; Period to File Petition.* — xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

CTA Second Division's Decision[2] promulgated on November 28, 2014 (the "Assailed Decision") and Resolution[3] promulgated on March 13, 2015 (the "Assailed Resolution"), which cancelled and withdrew the assessments made against respondent Asian Transmission Corporation ("ATC") for deficiency withholding tax on compensation ("WTC") in the amount of Php67,722,419.38, expanded withholding tax ("EWT") in the amount of Php7,436,545.83, and final withholding tax ("FWT") in the amount of Php537,651.55 for calendar year ("CY") 2002.

The Facts

The facts of the case, as found by the CTA Second Division, are as follows:[4]

> [ATC] is a corporation duly organized and existing under Philippine Laws with business address at Carmelray Industrial Park, Canlubang, Calamba City, Laguna. ATC is a manufacturer of motor vehicle transmission component parts and engines of Mitsubishi vehicles. It was organized and registered with the Securities and Exchange Commission on August 29, 1973 as evidenced by its Certificate of Incorporation.
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> [The CIR] is the Commissioner of the Bureau of Internal Revenue (BIR) with office address at BIR National Office Bldg., Agham Road, Diliman, Quezon City.
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> On January 30, 2003 and March 3, 2003, ATC filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes and Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax, respectively.
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> On August 11, 2004, ATC received Letter of Authority [(LOA)] No. 200000003557 where [the CIR] informed ATC that its revenue officers from the Large Taxpayers Audit and Investigation Division II shall examine its books of accounts and other accounting records for the taxable year 2002.

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[2] *Records, CTA Case No. 8476, Vol. 3, Decision,* pp. 1427-1460; penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring.
[3] *Id., Resolution,* pp. 1500-1511.
[4] *Id., Decision,* pp. 1427-1430.

Thereafter, [the CIR] issued a Preliminary Assessment Notice (PAN) to ATC.

Consequently, on various dates, ATC, through its Vice President for Personnel and Legal Affairs, Mr. Roderick M. Tan, executed several documents denominated as "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver), as follows:

Waiver	Source of Document	Date of Execution	Date of Extension of Investigation
First Waiver	Page 415, BIR Records	September 8, 2004	June 30, 2005
Second Waiver	Page 419, BIR Records	March 3, 2005	December 31, 2005
Third Waiver	Page 422, BIR Records	November 10, 2005	June 30, 2006
Fourth Waiver	Page 429, BIR Records	March 21, 2006	December 31, 2006
Fifth Waiver	Page 767, BIR Records	March 21, 2006	June 30, 2007
Sixth Waiver	Page 349, BIR Records	April 18, 2007	December 31, 2007
Seventh Waiver	Page 354, BIR Records	October 25, 2007	June 30, 2008
Eight[h] Waiver	Page 1176, BIR Records	May 30, 2008	December 31, 2008

Meanwhile, on February 28, 2008, ATC availed of the Tax Amnesty [P]rogram under Republic Act No. 9480.

On July 15, 2008, ATC received a Formal Letter of Demand from [the] CIR for deficiency [WTC] in the amount of P[hp]62,977,798.02, [EWT] in the amount of P[hp]6,916,910.51, [FWT] in the amount of P[hp]501,077.72. On August 14, 2008, ATC filed its Protest Letter in regard thereto.

Accordingly, on April 14, 2009, ATC received the Final Decision on Disputed Assessment where [the] CIR found ATC liable to pay deficiency tax in the amount of P[hp]75,696,616.75. Thus, on May 14, 2009, ATC filed an appeal letter/request for reconsideration with [the] CIR.

On April 10, 2012, ATC received the Decision of [the] CIR dated November 15, 2011, denying its request for reconsideration. As such, on April 23, 2012, ATC filed the instant Petition for Review (With Application for Preliminary Injunction and Temporary Restraining Order).

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On November 28, 2014, the CTA Second Division promulgated the Assailed Decision granting the Petition for Review of ATC. The dispositive portion of the Assailed Decision reads:[5]

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[5] *Records, Vol. 3, Decision*, pp. 1458-1459.

> **WHEREFORE**, in view thereof, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency [WTC] in the amount of P[hp]67,722,419.38, [EWT] in the amount of P[hp]7,436,545.83 and [FWT] in the amount of P[hp]537,651.55, or in the total amount of P[hp]75,696,616.75 for taxable year 2002, are hereby declared **CANCELLED, WITHDRAWN** and **WITH NO FORCE AND EFFECT**.
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> **SO ORDERED.**

Aggrieved, on December 16, 2014, the CIR filed her Motion for Reconsideration (Decision dated November 28, 2014)[6] of the Assailed Decision. On January 27, 2015, ATC filed by registered mail its Motion to Admit Opposition (To Respondent's Motion for Reconsideration Dated 16 December 2014)[7], with attached Opposition (To Respondent's Motion for Reconsideration dated 16 December 2014)[8].

In the Assailed Resolution[9] promulgated on March 13, 2015, the CTA Second Division granted ATC's Motion to Admit Opposition (To Respondent's Motion for Reconsideration Dated 16 December 2014), and denied the CIR's Motion for Reconsideration (Decision dated November 28, 2014). The dispositive portion of the Assailed Resolution reads:[10]

> **WHEREFORE**, premises considered, [the CIR's] Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Hence, on March 31, 2015, the CIR filed a Motion for Extension of Time to File Petition for Review[11], which was granted by the Court *En Banc* in a Resolution[12] promulgated on April 6, 2015. Thereafter, on April 20, 2015, the CIR filed the present Petition for Review[13] with the Court *En Banc*.

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[6] *Records, Vol. 3, Decision*, pp. 1464-1481.
[7] *Id.* at 1485-1488.
[8] *Id.* at 1489-1497.
[9] *Id.* at 1500-1511.
[10] *Id.* at 1511.
[11] *Rollo, CTA EB No. 1289*, pp. 1-5.
[12] *Id.* at 6.
[13] *Id.* at 7-83, with annexes.

On July 9, 2015, ATC filed by registered mail a Motion to Admit Comment/Opposition[14], with attached Comment/Opposition (To the Petition for Review dated 17 April 2015)[15], which was granted by the Court *En Banc* in a Resolution[16] promulgated on September 4, 2015. In the same Resolution, the Court *En Banc* directed the parties to file their respective memoranda within thirty (30) days from notice thereof.

On October 14, 2015, the CIR filed by registered mail a Manifestation[17] stating that she is adopting the arguments raised in her Petition for Review as her Memorandum. On the other hand, on October 19, 2015, ATC filed by registered mail its Memorandum[18].

On November 26, 2015, the Court *En Banc* promulgated a Resolution[19] submitting the case for decision; hence, this Decision.

The Issues

Based on the Petition for Review, the following are the issues to be resolved by the Court *En Banc*:

> WHETHER THE ASSESSMENT FOR DEFICIENCY WITHHOLDING TAXES ARE BARRED BY PRESCRIPTION; AND
>
> WHETHER ATC IS LIABLE TO PAY DEFICIENCY WITHHOLDING TAXES FOR CY 2002.[20]

Ultimately, the main issue to be resolved by the Court *En Banc* is whether petitioner CIR's right to assess respondent ATC for deficiency withholding taxes for CY 2002 has already prescribed.

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[14] *Rollo*, pp. 100-103.
[15] *Id.* at 104-112.
[16] *Id.* at 116-117.
[17] *Id.* at 135-137.
[18] *Id.* at 118-133.
[19] *Id.* at 140-141.
[20] *Rollo, Petition for Review*, p. 11.

Petitioner's arguments

The CIR argues that the deficiency withholding tax imposed on ATC does not fall within the ambit of the period of limitation provided in *Section 203 of the 1997 National Internal Revenue Code, as amended* (the *"1997 NIRC"*)[21]. According to the CIR, ATC's legal duty to remit taxes withheld cannot be barred by prescription because the taxes it withheld are only held in trust for the government. Further, the CIR posits that assuming the period within which to assess ATC for deficiency withholding tax finds application in the present case, ATC is estopped from assailing the validity of the waivers. The CIR also argues that assuming the waivers are defective, ATC slept on its rights and is barred by laches from arguing against the validity of the waiver. Finally, the CIR contends that even if the waivers were issued contrary to the requirements specified in *Revenue Memorandum Order ("RMO") No. 20-90*[22] and *Revenue Delegation Authority Order ("RDAO") No. 05-01*[23], said waivers are valid and binding between the parties.

Respondent's arguments

On the other hand, ATC counters that the present Petition for Review did not allege any error on the part of the CTA Second Division, and in fact did not contain any new and/or compelling arguments or averments as it is a mere rehash of previously discredited arguments. ATC likewise argues that *Section 203 of the 1997 NIRC* is applicable to the present case. According to law and jurisprudence, *Section 203 of the 1997 NIRC* covers the right of the government to assess and collect deficiency withholding tax. In addition, ATC puts forth that the "clean hands doctrine" bars the CIR from invoking the equitable principles of estoppel and laches. Finally, ATC counters that the waivers are void; thus, the assessments against it have already expired.

The Ruling of the Court En Banc

The Court *En Banc* rules in favor of the CIR.

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[21] *Republic Act No. 8424,* as amended (1997).
[22] April 4, 1990.
[23] August 2, 2001.

Section 203 in relation to *Section 222(b) of the 1997 NIRC* provides that internal revenue taxes shall be assessed within three (3) years from the last day prescribed by law for the filing of the return or the day the return was filed, whichever comes later, unless the CIR and the taxpayer timely agree in writing to extend the period to assess. The relevant provisions state:

> **Sec. 203.** ***Period of Limitation Upon Assessment and Collection.*** - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after 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 the 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.
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> **Sec. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** -
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> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
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> xxx xxx xxx

The exception to the three (3)-year prescriptive period for assessment of taxes refers to the execution by the CIR and the taxpayer of a valid Waiver of the Statute of Limitations. The Supreme Court, in *CIR v. Kudos Metal Corporation*[24], provided the guidelines for the execution of a valid Waiver, as follows:

[24] G.R. No. 178087, May 5, 2010, 620 SCRA 232.

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.

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 *Philippine Journalists, Inc. v. CIR*[25], the Supreme Court held that the guidelines for the execution of a Waiver must be strictly complied with as it is a derogation of the taxpayer's right against unreasonable investigation, thus:

> The NIRC, under Section 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subject to further investigation for taxes after the expiration of a reasonable period of time. As was held in *Republic of the Phils. v. Ablaza*:
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> RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed, thus:
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> xxx xxx xxx
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> 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. 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. RMO No. 20-90 explains the rationale of a waiver:

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[25] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

xxx xxx xxx[26]

Accordingly, prevailing jurisprudence mandates the strict observance of the guidelines provided in *RMO No. 20-90* and *RDAO No. 05-01* as regards the execution of Waivers. In the recent case of *CIR v. Next Mobile, Inc.*[27], however, the Supreme Court carved out an exception to the strict application of *RMO No. 20-90* and *RDAO No. 05-01*.

In the *Next Mobile* case, the Supreme Court held that while faithful compliance with the provisions of *RMO No. 20-90* and *RDAO No. 05-01* must be observed in order for a Waiver to be valid and binding, the equitable principles of *in pari delicto*, unclean hands, and estoppel should be applied such that the validity of defective Waivers should be upheld in keeping with the lifeblood theory of taxation. The relevant discussion of the Supreme Court reads:

> 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.] 01-05, 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.
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> *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.
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> 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

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[26] Underscoring ours.
[27] G.R. No. 212825, December 7, 2015.

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.] 01-05. 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.

Similar to the taxpayer in the *Next Mobile* case, the taxpayer in the present case executed several Waivers - eight (8) Waivers in fact. These Waivers had the following defects, as found by the CTA Second Division:[28]

1. The notarization of the Waivers was not in accordance with the *2004 Rules on Notarial Practice;*

2. Several Waivers clearly failed to indicate the date of acceptance by the Bureau of Internal Revenue;

3. The Waivers were not signed by the proper revenue officer; and

4. The Waivers failed to specify the type of tax and the amount of tax due.

While it is true that the provisions of *RMO No. 20-90* and *RDAO No. 05-01* must be strictly complied with in order for the Waivers in the present case to be valid, following the equitable principles of *in pari delicto*, unclean hands, and estoppel, the subject Waivers cannot be invalidated; both petitioner and respondent should be held accountable for the defects in the Waivers with the end in view that the taxes owed the government should be satisfied. It is only just for the Court *En Banc* to uphold the Waivers, for the government's power of taxation should take precedence especially in instances where both the taxpayer and the BIR are in bad faith.

Accordingly, the Court *En Banc* holds that the subject Waivers are valid; hence, the CIR's right to assess ATC for deficiency withholding taxes for CY 2002 had not yet prescribed.

WHEREFORE, premises considered, the Court hereby **GRANTS** the Petition for Review. Accordingly, the Decision promulgated on November 28, 2014 and the Resolution promulgated on March 13, 2015 by the Second Division are **REVERSED** and **SET**

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[28] *Records, Vol. 3, Decision,* pp. 1455-1456.

ASIDE. Let the case be **REMANDED** to the Court in Division for further proceedings in order to determine and rule on the merits of respondent's petition seeking the cancellation of the deficiency tax assessments for calendar year 2002 for withholding tax on compensation, expanded withholding tax, and final withholding tax in the aggregate amount of Php75,696,616.75.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1289** (CTA CASE NO. 8476)
- versus -	Present: **DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, and **RINGPIS-LIBAN**, *JJ.*
ASIAN TRANSMISSION CORPORATION *Respondent.*	Promulgated: AUG 09 2016 3:00 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lovell R. Bautista, in granting the Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) by correctly ruling that the subject waivers are valid; hence, the CIR's right to assess Asian Transmission Corporation (ATC) for deficiency withholding taxes for taxable year 2002 has not yet prescribed. I find it, however, necessary to expound on the following (i) the applicability of the statute of limitations under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, to withholding taxes; and (ii) the factual circumstances that gave rise to the application against ATC of the concept of estoppel as an exception to the statute of limitations on assessment of taxes.

Section 203 of the NIRC of 1997, as amended, applies to withholding taxes

The CIR posits that withholding tax is not an internal revenue tax but only a system used to collect taxes, hence, the CIR opines that the withholding tax is outside the ambit of Section 203 NIRC of 1997, as amended, which provides for the prescriptive period on the right of the CIR to assess internal revenue taxes.

The CIR's position is untenable. A withholding tax is a tax that is imposed and collected from the withholding agent, separate and distinct from the liability of the taxpayer from whom the withholding is made. It necessarily falls within the scope of paragraph (g), Section 21 of the NIRC of 1997, as amended, that is – "other taxes" as may be imposed and collected by the Bureau of Internal Revenue, *viz.*:

> "SEC. 21. Sources of Revenue. – The following taxes, fee s and charges are deemed to be national internal revenue taxes:
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> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes;
> (g) **Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue."** *(Boldfacing supplied)*

While it is true that the tax deducted and withheld by the withholding agents are held in trust for the government until paid to the collecting officer, the same does not justify the non-application of the statute of limitations with regard to the issuance of assessments for deficiency withholding taxes. Besides, no less than the Supreme Court, in a number of cases, has recognized the applicability of the statute of limitations under Section 203 and 222 of the NIRC of 1997, as amended, to withholding tax assessment and has ordered the cancellation of deficiency withholding taxes on the ground of prescription.[1]

ATC is estopped from assailing the validity of the waivers executed by its Vice President

[1] CIR v. Wyeth Suaco Laboratories, Inc., G.R. No. 76281, September 30, 1991; Philippine Journalists, Inc. v. CIR, G.R. No. 162852, December 16, 2004; CIR v. FMF Development Corporation, G.R. No. 167765, June 30, 2008; CIR v. Kudos Metal Corporation, G.R. No. 188087, May 5, 2010; CIR v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010; Samar –I Electric Cooperative v. CIR, G.R. No. 193100, December 10, 2014; CIR v. Next Mobile, Inc., G.R. No. 212825, December 7, 2015.

Despite the non-compliance of the subject waivers of statute of limitations executed by ATC with the requirements and procedures specified in Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, ATC is estopped from claiming that the waivers it executed are invalid and that the CIR's right to assess ATC for deficiency withholding taxes for taxable year 2002 has prescribed, by reason of ATC's positive acts prior to and subsequent to the issuance of the assailed assessment.

I quote below the extensive discussion in my Dissenting Opinion in *CIR v. Dole Philippines, Inc.*[2] on the application of estoppel against a taxpayer in instances where, as in this case, the taxpayer impugns the validity of its waivers after benefitting therefrom:

> I note that in denying the present petition, the *ponencia* emphasized that since the waivers of the statute of limitations issued by respondent were invalid for failure to comply with the requirements and procedures laid down in Revenue Memorandum Order (RMO) No. 20-90, the three-year prescriptive period to assess petitioner for deficiency income tax and sales tax for the year 1986 was not extended.
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> While it may be true that the waivers of the statute of limitations issued by respondent failed to comply with the requirements and procedures specified in RMO No. 20-90, it is my humble view that by reason of respondent's positive acts prior to and subsequent to the issuance of the deficiency income tax and sales tax assessments, respondent is estopped from claiming that the waivers were invalid and that the deficiency income tax and sales tax assessments for the year 1986 were issued beyond the prescriptive period.
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> True, in *Commissioner of Internal Revenue vs. Kudos Metal Corporation ("Kudos")*, the Supreme Court held that the doctrine of estoppel may not be applied against a taxpayer, as an exception to the statute of limitations on the assessment of taxes, where the taxpayer's waiver of the prescriptive period to assess is fatally defective for non-compliance with appropriate guidelines thereon, as set forth by the Bureau of Internal Revenue (BIR) itself. *Kudos* even made a pronouncement on the inapplicability of the ruling in *Collector of Internal Revenue vs. Suyoc Consolidated Mining Company ("Suyoc")* for the reason that the controversy in *Suyoc* involved collection and not assessment of taxes, *viz:*
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> The foregoing pronouncement in *Kudos,* however, should not in any way be construed as a doctrine that proscribes

[2] CTA EB No. 1190, February 4, 2016.

absolutely the application against a taxpayer of the concept of estoppel as an exception to the statute of limitations on the assessment of taxes. For:

> One. In rejecting the application of estoppel against the taxpayer, **the Supreme Court noted in *Kudos* that there was no positive act on record to show that the said taxpayer persuaded the BIR to postpone the issuance of an assessment.** Conversely, had such positive act been shown on record, the conclusion upon which the ruling was based would not have any factual moorings and *Suyoc* would have been applicable.
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> In other words, it can be inferred from *Kudos* that when there is a showing that the taxpayer performed acts that persuaded the BIR to delay the issuance of the deficiency tax assessments, **the doctrine of estoppel may still be applicable and may thus operate to prevent the taxpayer from raising the defense of prescription against the government's right to assess.** Stated differently, the non-application of the doctrine of estoppel, as an exception to the statute of limitations on the assessment of taxes, is not absolute as it depends on the special factual circumstances of each case.
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> Two. No less than the Supreme Court applied the doctrine of estoppel against a taxpayer **on an assessment case** after elucidating the concept of estoppel. On this point, I find the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue ("RCBC")* most enlightening, *viz.*:
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>> 'Under Article 1431 of the Civil Code, **the doctrine of estoppel is anchored on the rule that an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disapproved as against the person relying thereon**. A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.
>>
>> Estoppel is **clearly** applicable to the case at bench. **RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers.** Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are

gm

> invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.'

In *RCBC*, the partial payment of the revised assessment by RCBC was regarded by the Supreme Court as an action that belies its position that the waivers it issued are invalid and did not extend the prescriptive period to assess. There is nothing, however, in *RCBC* which holds that it is only the payment of the assessed amount, albeit partial, which would constitute as an overt or positive act that could put the taxpayer in estoppel. **Thus, as earlier interpreted, I submit that whether or not the doctrine of estoppel will be applied as an exception to the statute of limitations on the assessment of taxes must depend upon the facts of the case. In this case, I am of the humble view that the positive acts of respondent rightfully calls for its application.**

Moreover, in the recent case of *Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.) ("Next Mobile")* the Supreme Court applied the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes, *viz:*

> '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.'

In the case at bar, respondent performed acts that induced the BIR to defer the issuance of the assessments. Records reveal that to extend the BIR's prescriptive period to assess respondent for deficiency taxes for the year 1986, respondent executed four (4) waivers. As a consequence of the issuance of said waivers, petitioner delayed the issuance of the assessments. The assessment for deficiency income tax and sales tax for the year 1986 were issued on November 24, 1993, within the extended period as provided for in the questioned waivers. **On January 15, 1994, when respondent filed a protest against the assessment and requested for the withdrawal and cancellation of the deficiency income and sales tax assessment for lack of legal and factual basis, respondent did not raise as an issue the invalidity of the waiver and the prescription of petitioner's right to assess respondent for deficiency taxes for the year 1986**.

xxx xxx xxx

In fine, by virtue of respondent's own actions, the government has been persuaded to postpone the issuance of the assessment and delay the collection of the deficiency tax assessments. By the principle of estoppel, respondent should not be allowed to question the validity of the waivers and raise the defense of prescription against the government's right to assess and eventually, to collect, the deficiency income tax and sales tax for the year 1986. Impugning the validity of the waivers after benefiting therefrom and allowing respondent to rely on the same is simply too abhorrent, to say the least. In the language of *Next Mobile, supra:*

> '**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.
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> xxx xxx xxx
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> **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.** xxx 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.' (citations omitted)

In the case at bar, records show that on August 11, 2004, ATC received Letter of Authority No. 200000003557 informing it that the Bureau of Internal Revenue (BIR) will examine its books for taxable year 2002.[3]

[3] Division Docket (Volume I), p. 7.

Subsequently, on various dates, ATC through its Vice President for Personnel and Legal Affairs executed several waivers, with the following details:

Waiver[4]	Date of Execution	Date of Extension of Investigation
First	September 8, 2004[5]	June 30, 2005
Second	March 3, 2005[6]	December 31, 2005
Third	November 10, 2005[7]	June 30, 2006
Fourth	March 21, 2006[8]	December 31, 2006
Fifth	March 21, 2006[9]	June 30, 2007
Sixth	April 18, 2007[10]	December 31, 2007
Seventh	October 25, 2007[11]	June 30, 2008
Eighth	May 30, 2008[12]	December 31, 2008

The Court in Division found the following defects in the subject waivers: 1) the notarization of the respective waivers did not comply with the 2004 Rules on Notarial Practice Act; 2) several waivers failed to indicate the date of acceptance of the BIR; 3) the waivers were not signed by the CIR; and 4) the waivers failed to specify the type of tax and amount of tax due.[13]

Notably, the CIR and ATC dealt with each other relying on these waivers, fully aware of their defects and yet neither bothered to address these defects so that they conform to the requirements set by RDAO No. 05-01 and RMO No. 20-90.

Obviously, neither party is faultless. The revenue examiners were clearly negligent for failing to exact from ATC compliance of BIR's own rules. On the other hand, ATC, by virtue of its own actions, is estopped from questioning the validity of its waivers considering that the CIR delayed issuance of the assailed assessment precisely because of the waivers delivered to it by ATC. The assessment for deficiency withholding tax for taxable year 2002 was received by ATC

[4] Document denominated as "Waiver of Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code".
[5] Exhibit "B", BIR Records, p. 415.
[6] Exhibit "C", BIR Records, p. 419.
[7] Exhibit "D", BIR Records, p. 422.
[8] Exhibit "E", BIR Records, p. 429.
[9] Exhibit "F", BIR Records, p. 767.
[10] Exhibit "G", BIR Records, p. 349.
[11] Exhibit "H", BIR Records, p. 354.
[12] Exhibit "I", BIR Records, p. 1176.
[13] Decision, *En Banc* Docket, pp. 63-64.

on July 15, 2008, within the extended period as provided for in the questioned waivers. In its August 14, 2008 letter addressed to Ms. Elvira R. Vera, Head Revenue Executive Assistant – Excise,[14] relative to the FLD and FAN, ATC did not even allege the invalidity of the waivers. Likewise, its May 14, 2009 letter addressed to Commissioner Sixto S. Esquivias IV[15] relative to the FDDA, did not also make an issue of the alleged defects of the waivers.

All told, I VOTE to GRANT the Petition for Review; REVERSE and SET ASIDE the Court in Division's Decision promulgated on November 28, 2014 and Resolution March 13, 2015; and REMAND the case to the Court in Division for further proceedings to rule on the merits of ATC's petition seeking the cancellation of the deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax in the aggregate amount of ₱75,696,616.75 for taxable year 2002.

ROMAN G. DEL ROSARIO
Presiding Justice

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[14] Exhibit "O", Division Docket (Volume II), pp. 791-803.
[15] Exhibit "R", Division Docket (Volume II), pp. 811-820.