REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1652** (CTA Case No. 8756)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
CORAL BAY NICKEL CORPORATION, Respondent.	***Promulgated:*** AUG 14 2018 8:15 a.m.

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DECISION

UY, *J*.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on June 2, 2017 by the Commissioner of Internal Revenue, petitioner, against Coral Bay Nickel Corporation, respondent, praying for reconsideration and setting aside of the Decision dated January 13, 2017[2] and Resolution dated April 26, 2017[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8756, entitled "*Coral Bay Nickel Corporation, Petitioner, versus Commissioner of Internal*

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[1] EB Docket, pp. 7 to 23.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen Ringpis-Liban, EB Docket, pp. 25 to 42.

[3] *Ibid*, EB Docket, pp. 43 to 47.

Revenue, Respondent", the dispositive portions of which respectively read as follows:

Decision dated January 13, 2017:

> "**WHEREFORE**, the Petition for Review dated January 8, 2014 filed by Coral Bay Nickel Corporation is hereby GRANTED. Accordingly, the FDDA dated December 6, 2013 issued by respondent Commissioner of Internal Revenue against petitioner for taxable year 2007 for deficiency FWT in the amount of ₱254,721,476.95, inclusive of interest and compromise penalty, is hereby **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED**."

Resolution dated April 26, 2017:

> "**WHEREFORE**, there being no compelling legal arguments raised that will depart, much less modify the assailed Decision of January 13, 2017, respondent's *Motion for Reconsideration* dated February 1, 2017 is **DENIED**, for lack of merit.
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> **SO ORDERED**."

THE FACTS

Petitioner is the Commissioner of Internal Revenue (CIR), authorized to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Coral Bay Nickel Corporation (or Coral Bay) is a domestic corporation registered with the Securities and Exchange Commission under Company Registration No. A200205418, issued on April 4, 2002, with principal place of business at Barangay Rio Tuba, Bataraza, Palawan. It is registered with the BIR under Tax Identification No. 005-961-540-000, and with the Board of Investments (BOI) on June 27, 2002, as evidenced by its Certificate of Registration No. EP-2002-089.

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Coral Bay is engaged in owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market or otherwise treating metals, minerals and mined products to be used in production of mixed sulfide of nickel and cobalt, and any and all ingredients, products, and by-products of any thereof, and to producing, manufacturing, processing, refining, treating, selling, using, dealing in, distributing, marketing and otherwise turning to account or disposing of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by products thereof.

By virtue of the *Letter of Authority* (LOA) No. 00007327, Coral Bay received from the CIR a *Notice of Informal Conference* dated October 27, 2010. The former filed a *Reply* to the said *Notice* on December 1, 2010.

On February 16, 2011, Coral Bay received from the CIR a *Preliminary Assessment Notice* (PAN) with attached *Details of Discrepancy*, for its alleged deficiency value-added tax (VAT), fringe benefits tax (FBT), withholding tax (WT), and excise tax (ET). Coral Bay filed a *Reply* thereto on March 3, 2011.

On May 29, 2013, Coral Bay received from the CIR a *Formal Letter of Demand* (FLD) with attached *Details of Discrepancy* and *Assessment Notices* for alleged deficiency tax liabilities for taxable year ending December 31, 2007, as follows:

Expanded Withholding Tax (EWT)	₱ 15,795,303.06
Final Withholding Tax (FWT)	242,665,223.95
Fringe Benefit Tax (FBT)	218,503.08
TOTAL	**258,679,030.09**

Coral Bay paid the assessed amounts for EWT and FBT on June 14, 2013.

On June 26, 2013, Coral Bay protested the assessment for the alleged deficiency FWT amounting to ₱242,665,223.95, inclusive of interest and penalties. This was followed by a *Supplementary Protests* filed on August 27, 2013, on August 28, 2013, and on October 21, 2013.

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On December 10, 2013, Coral Bay received from the CIR the *Final Decision on Disputed Assessment* (FDDA) dated December 6, 2013, together with the *Details of Discrepancy* for taxable year 2007, assessing it with deficiency FWT in the amount of ₱254,721,476.95, inclusive of twenty percent (20%) interest amounting to ₱138,520,523.40 and compromise penalty of ₱25,000.00.

Coral Bay then filed a *Petition for Review* with the Court in Division on January 8, 2014, docketed as CTA Case No. 8756.

On March 10, 2014, the CIR filed his *Answer* in CTA Case No. 8756, interposing special and affirmative defenses, which include, among others, the following defenses: that Coral Bay is liable to pay deficiency FWT in the amount of ₱254,721,476.95 for taxable year 2007; and that Coral Bay should have complied with the requirements of Revenue Memorandum Order (RMO) No. 01-2000 dated November 25, 1999 in order to claim exemption from taxes pursuant to a tax treaty. Allegedly, Coral Bay cannot out of its own volition and interpretation of the tax treaty, just automatically exempt itself from the payment of withholding taxes without observing the provisions under RMO No. 01-2000. The CIR claims that his right to assess Coral Bay's alleged deficiency FWT for the months of January, February and March 2007 has not prescribed; and that the period of limitation to assess and collect deficiency taxes provided in Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended extends only to assessment of "all internal revenue taxes" as distinguished from assessment of "penalties" on the withholding agent for its failure to remit the proper amount of taxes withheld. Allegedly, the present case involves false or fraudulent return or failure to file return considering that Coral Bay failed to file the correct FWT returns and withhold the correct amount of FWT, as such, the applicable provision shall be Section 222(a) where the assessment may be made within ten (10) years after the discovery of falsity, fraud or omission. Hence the CIR's assessment was well within the ten (10) year prescriptive period provided under Section 222(a) of the NIRC of 1997.

After the Pre-Trial Conference in CTA Case No. 8756 held on May 8, 2014, the Court in Division issued a *Pre-Trial Order* on June 18, 2014.

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In support of its Petition for Review in CTA Case No. 8756, Coral Bay presented Allen Roy T. Catacutan and Ivan V. Hilario, as its witnesses.

On October 13, 2014, Coral Bay formally offered its evidence, which were all admitted in the Resolution dated November 24, 2014 issued by the Court in Division.

For its part, the CIR presented witnesses Revenue Officers (ROs) Jesus DS. Reyes and Roque Gildo M. Ganaden, to substantiate his stance. With the issuance of the Resolution dated November 25, 2015 by the Court in Division, petitioner rested his case.

Thus, CTA Case No. 8756 was submitted for decision on January 25, 2016 by the Court in Division.

In the Assailed Decision dated January 13, 2017,[4] Coral Bay's *Petition for Review* was granted in CTA Case No. 8756. The Court in Division cancelled and set aside the FDDA dated December 6, 2013 issued by the CIR against Coral Bay for taxable year 2007 for deficiency FWT in the amount of ₱254,721,476.95, inclusive of interest and compromise penalty.

The CIR filed its *Motion for Reconsideration (Re:* Decision *promulgated 13 January 2017)* on February 1, 2017.[5] On March 3, 2017, Coral Bay filed its *Comment/Opposition*,[6] after being granted by the Court in Division a 15-day period from notice to do so.[7]

In the assailed Resolution dated April 26, 2017,[8] the Court in Division denied the CIR's *Motion for Reconsideration* for lack of merit.

On May 17, 2017, the CIR filed, before the Court *En Banc*, a *Motion for Extension of Time to File Petition for Review*,[9] praying for

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[4] EB Docket, pp. 25 to 42; Division Docket – Vol. 2 (CTA Case No. 8756), pp. 946 to 963.
[5] Division Docket – Vol. 2 (CTA Case No. 8756), pp. 968 to 988.
[6] Division Docket – Vol. 2 (CTA Case No. 8756), pp. 998 to 1013.
[7] Resolution dated February 8, 2017, Division Docket – Vol. 2 (CTA Case No. 8756), p. 991.
[8] EB Docket, pp. 43 to 47; Division Docket – Vol. 2 (CTA Case No. 8756), pp. 1016 to 1020.
[9] EB Docket, pp. 1 to 4.

an extension of fifteen (15) days from May 18, 2017, or until June 2, 2017, to file his *Petition for Review.*

In the Minute Resolution dated May 18, 2017,[10] the Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from May 18, 2017, or until June 2, 2017, within which to file his *Petition for Review.*

On June 2, 2017, the CIR filed the instant *Petition for Review* with the Court *En Banc.*[11]

As directed by the Court in the Resolution dated June 29, 2017,[12] Coral Bay filed its *Comment/Opposition* to the instant Petition for Review *on* August 4, 2017.[13]

Thereafter, the instant case was deemed submitted for decision in the Resolution dated September 20, 2017.[14]

Hence, this Decision.

THE ISSUES

Petitioner CIR raises the following issues for the Court *En Banc*'s resolution, to wit:

"I

RESPONDENT IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE WAIVERS.

II

THE THIRD DIVISION OF THE HONORABLE COURT ERRED WHEN IT RULED THAT PRIOR RULING IS NEEDED BEFORE RESPONDENT IS ENTITLED TO THE PREFERENTIAL TREATY RATE."[15]

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[10] EB Docket, p. 6-A.
[11] EB Docket, pp. 7 to 23.
[12] EB Docket, pp. 52 to 53.
[13] EB Docket, pp. 54 to 69.
[14] EB Docket, pp. 71 to 72.
[15] *Petition for Review*, EB Docket, p. 10.

Petitioner's arguments:

Petitioner CIR argues that respondent Coral Bay is estopped from questioning the validity of the waivers it voluntarily executed. It is settled that a taxpayer may be estopped from raising the defense of prescription because by its repeated requests or positive acts, it has induced the government authorities to delay collection of the assessed tax. In this case, Coral Bay never questioned the validity of the waivers during the conduct of the audit; and it was only when the audit investigation yielded unfavorable results that it started to question the validity of the waivers.

Moreover, the CIR asserts that the imposition of the penalty on a withholding agent for failure to withhold is not covered by the three-year prescriptive period. Allegedly, the amount sought to be collected from Coral Bay is not the tax itself. In instances of non-withholding of the tax, such as the instant case, the liability of the withholding agent becomes separate and distinct from the liability of the person on whom the tax is primarily imposed because the cause of action against the withholding agent is not for the collection of the tax but for the enforcement of the withholding tax provision of the NIRC of 1997.

In case of breach by the agent of his legal duty, he is assessed not for the collection of income tax but merely penalized for failure to comply with the withholding tax provision. In addition, the tax deducted and withheld by the withholding agents shall be held as a special fund in trust for the government; and that in case of failure to remit the special fund, the agent is penalized and held liable for the tax arising from the breach of its legal duty to withhold,

Hence, since the liability of the withholding agent is a penalty, then the period of limitation provided in Section 203 of the NIRC of 1997 finds no application. Allegedly, this provision is applicable only in the assessment and collection of taxes, but not penalties.

The CIR likewise argues that the Court in Division erred when it cancelled the deficiency FWT assessment. According to the CIR, Coral Bay should have complied with the requirements of RMO No. 01-2000 dated November 25, 1999 in order to claim exemption from taxes pursuant to a tax treaty. Coral Bay cannot, out of its own volition and interpretation of the tax treaty, just automatically exempt itself from the payment of withholding taxes without observing the provisions under RMO No. 01-2000.

Finally, the CIR contends that it has correctly assessed respondent for deficiency FWT on income payments of dividends, interest and royalties for taxable year 2007.

Respondent's arguments:

Respondent Coral Bay argues that the petitioner CIR misapplied the doctrine in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.* (hereinafter referred to as "*Next Mobile* case")[16]. The Supreme Court in the said case noted several flaws in the execution of the *Waiver of the Statute of Limitations* which are not present in the instant case. Hence, the CIR's reliance on *Next Mobile* case is misplaced.

For a waiver to validly extend the prescriptive period, it should be timely accepted by the BIR prior to the expiration of the right to assess. Such fact is allegedly lacking in the instant case for the taxable periods January, February and March 2007. As such, the CIR's right to assess the deficiency FWT for the months January, February and March 2007 has already prescribed.

According to Coral Bay, the rule on prescription applies to the alleged deficiency FWT, since the amount being assessed represents "internal revenue taxes" that is well within the coverage of the rules on prescription. Coral Bay points out that FWT, a type of withholding tax, is well embraced within the definition of the term "internal revenue taxes." Hence, the same should be subject to the prescriptive period imposed for all internal revenue taxes.

Allegedly, the Supreme Court has already ruled in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* (hereinafter referred to as "*Deutsche Bank* case")[17], that non-compliance with the requirements under RMO No. 01-2000 should not operate to divest a resident foreign taxpayer's entitlement to a preferential rate provided under a tax treaty.

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[16] G.R. 212825, December 7, 2015.
[17] G.R. No. 188550, August 19, 2013.

The principle of *pacta sunt servanda*, as extensively explained in the *Deutsche Bank* case regarding the application of preferential tax rates pursuant to tax treaties, is entitled to great respect. Applying the said principle, the requirement for the filing of an application for a tax treaty relief with the BIR prior to the availment of a tax treaty cannot be validly imposed by petitioner CIR against respondent Coral Bay. As such, the application of the preferential tax rate under tax treaties is not barred by mere non-compliance with RMO No. 01-2000.

Hence, the Court in Division correctly ruled that it is entitled to the preferential tax rate of 10% under the Philippines-Japan Tax Treaty, as it had sufficiently established through documentary and parol evidence, all the requisites for its entitlement to the preferential tax rate of 10% FWT on its income payments to the recipients in Japan pursuant to Articles 10(3), 11(3), and 12(3) of the Philippines-Japan Tax Treaty.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is bereft of merit.

Petitioner's right to assess respondent for deficiency FWT for the months of January, February and March 2007 has already prescribed.

Petitioner CIR argues that respondent Coral Bay is estopped from questioning the validity of the waiver it voluntarily executed, and cited the *Next Mobile* case, wherein the Supreme Court upheld the validity of the said waivers on the ground that both the taxpayer and the BIR are *in pari delicto* or "in equal fault" and ruled that the taxpayer is estopped from questioning the validity of the waivers executed. The CIR claims that in the instant case, Coral Bay never questioned the validity of the waivers during the conduct of the audit and that it was only when the audit yielded unfavorable results that respondent started to question the validity of the waivers.

We disagree with petitioner.

Section 203 of the NIRC of 1997 states the period of limitation upon the assessment of taxes, to wit:

> "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 a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For 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**."

Based on the foregoing, the government is mandated to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Accordingly, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.

By way of exception, Section 222 (b) of the same Code authorizes that the prescriptive period under Section 203 may be extended to a later date by an agreement in writing between the taxpayer and petitioner. Said provision reads:

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

Clearly, the three-year prescriptive period may be extended, if before the expiration of the time prescribed in Section 203 for the assessment of the tax, both petitioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

In the instant case, Coral Bay was assessed with deficiency FWT for calendar year 2007. Relevantly, the dates of filing of the pertinent returns for the months of January, February and March 2007 and the corresponding dates within which respondent should assess respondent for deficiency FWT for the period provided under Section 203, are the following:

Period (CY ending December 31, 2007)	Date Filed	Last day to file return	Last day to assess under Section 203
January	February 12, 2007[18]	February 14, 2007	February 14, 2010
February	March 12, 2007[19]	March 14, 2007	March 14, 2010
March	April 13, 2007[20]	April 16, 2007[21]	April 16, 2010

Based on the foregoing, the CIR had until February 14, 2010, March 14, 2010, and April 16, 2010, the last day prescribed under the aforequoted Section 203 within which to assess respondent for deficiency FWT for the months of January, February and March 2007, respectively.

Under Section 222(b) of the NIRC of 1997, as an exception to the three-year prescriptive period, both the CIR and the taxpayer may validly extend the said period through a written agreement, which must be duly executed **prior** to the expiration of the period prescribed in Section 203 of the NIRC of 1997 for the assessment of the relevant tax.

In this case, however, the *Waiver of the Defense of Prescription Under the Statute of Limitations Under the National Internal Revenue Code*[22] (hereinafter referred to as "first waiver"), **became effective only on April 30, 2010**, when the said waiver was accepted by the BIR.

[18] BIR Records, p. 143.
[19] BIR Records, p. 141.
[20] BIR Records, p. 136.
[21] April 14, 2007 fell on a Saturday.
[22] Exhibit "P-23", Division Docket – Vol. 2 (CTA Case No. 8756), p. 768.

Clearly, the first waiver became binding and effective between the parties after the lapse of the three-year prescriptive period to assess respondent for the deficiency FWT for the months January, February and March 2007. Accordingly, the first waiver, failed to validly extend the CIR's right to assess Coral Bay for the said taxes.

Consequently, the assessment for the deficiency FWT for the months January, February and March 2007 as contained in the FDDA dated December 6, 2013 had already prescribed. Thus, the said assessments are deemed invalid or without any force or effect.

The principle of in* pari delicto *pursuant to the* Next Mobile *case is not applicable in the instant case.

Contrary to the allegation of the CIR, the *Next Mobile* case finds no application in the instant case since the factual milieu in the said case is not on all fours with the present case.

In the instant case, the basis of the Court in Division for invalidating the assessment for deficiency FWT for the months January, February and March 2007 is the fact that the first waiver became effective after the lapse of the three-year prescriptive period to assess deficiency taxes under Section 203 of the NIRC of 1997.

On the other hand, the issue in the *Next Mobile* case deals with the defects and infirmities of the waivers which include: (1) lack of authority to execute the waivers; (2) the dates of acceptance by the BIR were not indicated therein; and (3) the fact of receipt by the BIR of its copy of the Second Waiver was not indicated on the face of the original Second Waiver. The Supreme Court, in upholding the validity of the waivers despite the infirmities noted, applied the principle of in *pari delicto* or "in equal fault" and ruled that the taxpayer was at fault for deliberately executing defective waivers. Such is not the scenario in the instant case.

Clearly, the application of the principle of in *pari delicto* or "in equal fault" as enunciated in the *Next Mobile* case is not obtaining in the present case in view of the disparity in the issues, as well as, the factual background of the case.

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Respondent is not estopped from questioning the validity of the waiver.

As regards the CIR's allegation that Coral Bay is estopped from questioning the validity of the waiver, the same deserves scant consideration.

We have in numerous occasions reminded the CIR that the *"doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy."*[23]

As discussed above, when the first waiver became effective, the assessments for deficiency FWT for the months January, February and March 2007 had already prescribed. Hence, the subject assessments are considered null and void. Verily, the CIR cannot use the doctrine of estoppel to validate a void assessment. Moreover, estoppel attaches only when there is failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier. In the case at bar, Coral Bay was not remiss in asserting any of its rights. In fact, it raised the issue on prescription in its *Protest* to the FLD dated May 29, 2013 filed on June 26, 2013.[24]

The period of limitation under Section 203 is applicable to withholding taxes.

Petitioner CIR argues that in case of breach by the withholding agent of his legal duty to withhold taxes, he is assessed not for the collection of income tax but merely penalized for failure to comply with the withholding tax provision. Hence, in the instant case, since the liability of Coral Bay as a withholding agent is a penalty, then the

[23] *Commissioner of Internal Revenue, vs. Bpi-Philam Life Assurance Corporation (Formerly Ayala Life Assurance, Inc.),* CTA EB Case No. 1240, August 24, 2015; *Commissioner of Internal Revenue, vs. Ajinomoto Philippines Corporation,* CTA EB Case No. 1010, May 26, 2015; *Commissioner of Internal Revenue, vs. Nikken Philippines, Inc.,* CTA EB Case No. 1058, October 23, 2014. *Commissioner of Internal Revenue, Petitioner, vs. Alcon Laboratories, Inc.,* CTA EB Case No. 1087, September 30, 2014; *Commissioner of Internal Revenue, vs. La Frutera, Inc.,* CTA EB Case No. 1011, August 4, 2014; *Commissioner of Internal Revenue, vs. Belle Corporation,* CTA EB Case No. 962, March 5, 2014.

[24] Exhibit "P-17", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 748 to 756.

period of limitation provided in Section 203 of the NIRC of 1997 finds no application.

Respondent Coral Bay, on the other hand, counter-agues that the rule on prescription applies to the alleged deficiency FWT, since the amount being assessed by petitioner represents "internal revenue taxes". Allegedly, FWT, a type of withholding tax, is well embraced within the definition of the term "internal revenue taxes." Hence, the same should be subject to the prescriptive period imposed for all internal revenue taxes.

We agree with respondent Coral Bay.

We find no merit in petitioner CIR's contention that the period of limitation is not applicable to FWT. In a plethora of cases,[25] the Supreme Court has consistently and uniformly applied the three-year prescriptive period on the assessment of withholding taxes, without qualification or distinction.

Further, it is a general rule of statutory interpretation that provisions should not be given a restricted meaning where no restriction is indicated. Just as the express enumeration of persons, objects, situations, etc., is construed to exclude those not mentioned, according to a well-known maxim, so no distinction should be made when none appears to be intended. This is not an arbitrary rule but one founded on logic.[26]

Hence, considering that Section 203 of the NIRC of 1997 applies to all internal revenue taxes and that no restriction or qualification is indicated as to its application on certain taxes, there is no basis not to apply the rule on prescription to withholding taxes.

In sum, the Court in Division is correct in applying the three-year prescriptive period on the assessment of deficiency FWT for the months of January, February and March 2007.

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[25] *Commissioner of Internal Revenue vs. Standard Chartered Bank,* G.R. No. 192173. July 29, 2015; *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[26] *Lo Cham vs. Ocampo, et al., etseq.,* G.R. Nos. L-831, L-876 and L-878, November 21, 1946.

The Court in Division is correct in canceling the deficiency FWT assessment for calendar year 2007.

In the instant case, Coral Bay applied the 10% preferential tax rate on its income payments (*i.e.*, dividends, interest, royalties and technical fees) for calendar year 2007, pursuant to Articles 10(3), 11(3), and 12(3) of the Philippines-Japan Tax Treaty[27]. The CIR, on the other hand, denied Coral Bay with benefits of the Philippines-Japan Tax Treaty and assess respondent for deficiency FWT on the said income payments.

The CIR argues that Coral Bay should have complied with the requirements of RMO No. 01-2000 in order to claim exemption from taxes pursuant to a tax treaty. Allegedly, Coral Bay cannot, on its own volition and interpretation of the tax treaty, just automatically exempt itself from the payment of withholding taxes without observing the provisions under RMO No. 01-2000.

For Coral Bay's failure to comply with the requirements, the CIR assessed Coral Bay for deficiency FWT. In particular, the CIR argues that:

1. The dividend payments made by Coral Bay to Mitsui and Co., Ltd., and Sojitz Corporation are subject to the higher tax rate of 25% pursuant to Article 10 (2)(b) of the Philippines-Japan Tax Treaty and not the lower rate of 10% under Article 10 (2)(a) of the said treaty, considering that the said entities do not hold at least 25% of the total shares.

2. The interest payments made by Coral Bay to Sojitz Corporation, Sumitomo Metal Mining Co. Ltd., and Sumitomo Bank, under the Loan Agreement, the Term Loan Agreement is subject to FWT at the rate of twenty percent (20%) of the gross amount thereof under Section 28(B)(5)(a) of the NIRC of 1997, as amended, considering that Coral

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[27] Officially known as the "CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME", which was signed in Tokyo, Japan on February 13, 1980, and entered into force on July 20, 1980.

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Bay's application for tax treaty relief was filed beyond the period prescribed under Section III (2) of RMO No. 1-2000.

As for the other interest payments, with the corresponding Tax Treaty Relief Application (TTRA) filed within the prescribed period, the same shall be subject to the higher preferential rate of 15% pursuant to Article 10 (2) and not the 10%, since the said interest payment is **not** paid "in respect of government securities, bond or debentures". Further, it is **not** "paid by a company, being a resident of the Philippines, registered with the BOI and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines" pursuant to Article 11 of the Philippines-Japan Tax Treaty.

3. On the royalty payments made by Coral Bay to Sumitomo Metal Mining Co. Ltd. and Sumitomo Chemicals, the CIR imposed FWT at the rate of thirty-five percent (35%) of the gross income thereof under Section 28(B)(1)(a) of the NIRC of 1997, as amended, considering that Coral Bay's application for tax treaty relief was filed beyond the period prescribed under Section III (2) of RMO No. 1-2000. As such, the 10% preferential tax rate under Article 12 of the Philippines-Japan Tax Treaty is not applicable.

   As for the other royalty payments, with the corresponding TTRA filed within the prescribed period, the same shall be subject to the higher preferential rate of 25% under Article 12 (2)(b) of the Philippines-Japan Tax Treaty.

4. The technical fees paid by Coral Bay to Sumitomo Metal Mining Co. Ltd. amounting to ₱53,595,650.00 and Sumitomo Seka Chemicals Co. Ltd., are subject to a FWT of 35% under Section 28(B)(1) of the NIRC of 1997, as amended since no TTRA was filed by Coral Bay.

   As for the technical fees paid to Sumitomo Metal Mining Co. Ltd. amounting to ₱7,240,955.30, it is subject to 25% tax rate under Article 12 (2b) of the Philippines -Japan Tax Treaty since the TTRA was filed within the prescribed period.

It bears noting that that the above arguments raised by the CIR in the instant petition are a mere rehash of what have been proffered by petitioner in his *Answer* filed with the Court in Division in CTA

Case No. 8756 on March 10, 2014, which were sufficiently passed upon and exhaustively discussed in the assailed Decision. Apart from bare reiterations of the details of the subject assessment, the CIR failed to make any specific discussion to support his arguments in the instant petition, and to point out the supposed error in the findings of fact of the Court in Division.

In the assailed Decision, the Court in Division ruled that a prior application for tax treaty relief with the BIR is not required before a taxpayer can avail of the preferential tax rates under Philippine tax treaties. The Court in Division likewise ruled that Coral Bay was able to prove that it has complied with the conditions set forth under the Philippines-Japan Tax Treaty to be entitled to that tax treaty of 10% on dividends, interest, and royalties including the technical fess for taxable year 2007.

We sustain the findings of the Court in Division.

A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax rate under the Philippines-Japan Tax Treaty.

In the assailed Decision, the Court in Division ruled that a prior application for tax treaty relief with the BIR is not required before a taxpayer can avail of the preferential tax rate under Philippine tax treaties.

Petitioner CIR however invokes Section III (2) of RMO 1-2000 in denying respondent with the tax treaty relief under the Philippines-Japan Tax Treaty, to wit:

"III. Policies:

In order to achieve the above-mentioned objectives, the following policies shall be observed:

xxx xxx xxx

2. **Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No.**

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> **0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction** i.e. payment of dividends, royalties, etc., accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete." *(Emphasis supplied)*

We disagree with petitioner.

In the *Deutsche Bank case*, the Supreme Court categorically ruled that failure to strictly comply with the prescribed period under RMO No. 1-2000 does not automatically deprive a taxpayer of the benefits provided under Philippine tax treaties. The Supreme Court explains:

> "Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and the obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.
>
> xxx xxx xxx
>
> 'A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.' Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.
>
> Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of

entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with the tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management process, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring application for tax treaty relief."

Further, the Supreme Court, in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[28] reiterated its ruling in the *Deutsche* case that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. The Supreme Court also reiterated therein that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially

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[28] G.R. Nos. 193383-84, January 14, 2015.

since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.

It is clear from the foregoing jurisprudential pronouncements that a prior application for tax treaty relief is not mandatory before a taxpayer may enjoy the reliefs provided under Philippine tax treaties. As ruled by the Supreme Court, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief, and not for the granting of the relief being sought. Moreover, the Philippines-Japan Tax Treaty does not provide for any pre-requisites for the availment of the benefits provided therein.

Considering that the instant case and the above-cited cases involve the same issue, *i.e.*, whether a prior application for tax treaty relief filed with the BIR is necessary before a taxpayer can avail of the preferential tax treatment under Philippine tax treaties, We are duty bound to adhere to the precedent laid down by the Supreme Court in the aforecited cases.

Accordingly, the fact that respondent failed to file a prior application for tax treaty relief for its income payments does not *ipso facto* preclude it from enjoying the preferential tax rate of 10% under Articles 10, 11 and 12 of the Philippines-Japan Tax Treaty. Simply put, such failure is of no moment.

Respondent is entitled to the 10% preferential tax rate under Articles 10(3), 11(3) and 12(3) of the Philippines-Japan tax treaty for the subject income payments (i.e., dividends, interests, royalty including technical fees) for taxable year 2007.

In this case, the Court in Division ruled that Coral Bay was able to prove its compliance with the conditions set forth under the Philippines-Japan tax treaty to be entitled to that tax treaty rate of 10% on dividends, interest, and royalties including the technical fees for taxable year 2007.

In particular, the Court in Division found that Coral Bay is registered with the BOI and is engaged in preferred pioneer areas of investment under the investment incentives law of the Philippines. Hence, pursuant to Articles 10, 11, and 12 of the Philippines-Japan Tax Treaty, the subject income payments of dividends, interest, royalties including technical fees made by respondent for taxable year are subject to the preferential tax rate of 10%.

We sustain the findings of the Court in Division.

Under the pertinent provisions of the Philippines-Japan Tax Treaty, a 10% preferential tax rate is imposed on interest, dividends and royalties, including technical fees, as follows:

"ARTICLE 10

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

xxx xxx xxx

(3) Notwithstanding the provisions of paragraph (2)**, the amount of tax imposed by the Philippines on the dividends paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan**, who is the beneficial owner of the dividends, <u>**shall not exceed 10 per cent of the gross amount of the dividends**</u>.

xxx xxx xxx

ARTICLE 11

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

xxx xxx xxx

(3) Notwithstanding the provisions of paragraph (2), **the amount of tax imposed by the Philippines on**

the interest paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan, who is the beneficial owner of the interest, **shall not exceed 10 per cent of the gross amount of the interest**.

xxx xxx xxx

ARTICLE 12

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

xxx xxx xxx

(3) Notwithstanding the provisions of paragraph (2), **the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Japan**, who is the beneficial owner of the royalties, **shall not exceed 10 per cent of the gross amount of the royalties**.

xxx xxx xxx" *(Emphasis and underscoring supplied.)*

Based from the foregoing, the amount of tax that may be imposed by the Philippines on the dividends, interest and royalty payments **shall not exceed 10%**, provided the following conditions are met:

1. The income payor must be a resident of the Philippines, registered with the BOI and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines; and

2. The recipient of the income must be a resident of Japan.

As found by the Court in Division, respondent has complied with the foregoing conditions.

As to the *first condition*, a perusal of the records of the case shows that respondent presented the *Certificate of Incorporation*, issued by the Securities and Exchange Commission on April 4, 2002, with Registration No. A200205418,[29] to prove that it is a corporation organized and existing under the laws of the Philippines. Likewise, to prove that it is registered with the BOI and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines, respondent presented its *Certificate of Registration* issued by the BOI, on June 27, 2002,[30] showing that it is registered as a pioneer producer of mixed sulfide of nickel and cobalt under Certificate of Registration No. EP-2002-089.

Anent the *second condition*, Coral Bay presented the duly consularized *Residence Certificates* of Mitsui and Co., Ltd.,[31] Sojitz Corporation,[32] Sumitomo Metal Mining Co. Ltd.,[33] Sumitomo Mitsui Banking Corporation,[34] and Sumitomo Seika Chemicals Co. Ltd.,[35] issued by the tax authorities of Japan, to prove that the said entities are residents thereof.

Clearly, Coral Bay has duly proven its entitlement to the 10% preferential tax rate pursuant to Articles 10(3), 11(3) and 12(3) of the Philippines-Japan Tax Treaty.

Further, it bears emphasis that the CIR failed to controvert the said evidence presented by Coral Bay.

As for CIR's allegation that since Coral Bay is a PEZA-registered entity as early as 2002, and as such, Article 11(3) under the Philippines-Japan Tax Treaty cannot be applied, lacks basis. As ruled by the Court in Division, Coral Bay presented the *Certifications*

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[29] Exhibit "P-8", Division Docket – Vol. 2 (CTA Case No. 8756), p. 689.
[30] Exhibits "P-10", "P-10-1", and "P-10-2", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 731 to 736.
[31] Exhibit "P-12", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 738 to 739.
[32] Exhibit "P-13", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 740 to 741.
[33] Exhibit "P-14", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 742 to 743.
[34] Exhibit "P-16", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 746 to 747.
[35] Exhibit "P-15", Division Docket – Vol. 2 (CTA Case No. 8756), pp. 744 to 745.

issued by the BOI dated May 8, 2012[36] and July 15, 2014[37], which show that Coral Bay's BOI registration is still valid and subsisting. Moreover, there is nothing on record which shows that the BOI-registration of Coral Bay was cancelled for taxable year 2007.

In sum, We find no reason to deviate from the findings of the Court in Division that Coral Bay is entitled to the 10% preferential tax rate under Articles 10, 11, and 12 of the Philippines-Japan Tax Treaty for the subject income payments for taxable year 2007.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated January 13, 2017 and the Resolution dated April 26, 2017, both rendered by the Court in Division in CTA Case No. 8756, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(took no part)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[36] Exhibit "P-11", Division Docket – Vol. 2 (CTA Case No. 8756), p. 737.
[37] Exhibit "P-28", Division Docket – Vol. 2 (CTA Case No. 8756), p. 811.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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