REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MYRNA S. LEONIDA OIC-REGIONAL DIRECTOR, BIR REVENUE REGION NO. 12, Petitioner,	**CTA EB NO. 1925** (CTA Case No. 9036)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MARY SUSAN R. FORTICH, Respondent.	Promulgated: FEB 04 2020 3:57 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated May 10, 2018 ("Assailed Decision") and Resolution[2] dated August 17, 2018 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), cancelling the assessments Petitioner issued against Respondent for deficiency income tax and value-added tax ("VAT") for taxable year 2010 in the amounts of Php4,337,539.43 and Php13,541,976.90, respectively.

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[1] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan concurring; Docket, pp. 593-627.

[2] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan concurring; *Id.*, pp. 672-681.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for taxable year 2010 are **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"[3]

Meanwhile, the Assailed Resolution provides:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated 10 May 2018)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

The Parties

Petitioner, represented by the Commissioner of Internal Revenue ("CIR")[5], is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested under the law with the authority to carry out the functions, duties, and responsibilities of said Office, said government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[6]

Respondent, on the other hand, is the proprietress of F-5 Gas Station with address at Cor. Magsaysay and S. Villegas Sts., Poblacion Guihulngan, Negros Oriental.[7]

The Facts

The facts as found by the Second Division are as follows:

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3 *Id.*, p. 627.
4 *Id.*, p. 681.
5 Rollo, Petition for Review, p. 7.
6 Docket, Decision, p. 593.
7 *Id.*

"On June 14, 2012, the BIR issued Letter Notice (LN) No. 079-RLF-10-00-00025, which was received by [Respondent] on July 9, 2012. Attached to the LN are the (1) Details of Taxpayer's Suppliers' Records; and (2) unsigned Computation Sheet.

Subsequently, a Follow-Up Letter dated July 25, 2012 was issued to [Respondent] by Revenue District Officer (RDO) Cresencio A. Agad, with an attached signed Computation Sheet.

On August 2, 2012, [Respondent] wrote a letter addressed to RDO Agad stating, among others, that a 6.9 magnitude earthquake hit her province on February 6, 2012 which had caused severe damage and loss to many properties, including her gas station. Thus, many of their documents, records and files that were stored in their stock room were defaced beyond readability as they were soaked/buried in spilled lubes, battery solution, rainwater and debris. Nonetheless, she submitted her comment/clarification on the subject assessments.

Subsequently, [Respondent] received a Notice of Informal Conference dated November 21, 2012.

On February 26, 2013, [Respondent] received a Preliminary Assessment Notice (PAN), with attached Details of Discrepancy, issued by Regional Director Aranas.

[Respondent] responded to the PAN through a letter dated March 7, 2013, where she averred, among others, that: (1) despite exerting utmost diligence, she was unable to recover the records, and, hence, cannot dispute respondent's findings; (2) the industry standard profit margin was only about 1-2.5% across the country, contrary to the cost ratio of 86.87% and the profit factor of 13.03% used by respondent; and (3) the cost ratio of 86.87% stated on her Income Tax Return (ITR) was erroneous because it was prepared by her dishonest bookkeeper. Hence, [Respondent] requested that the profit factor of 1-2.5% be validated by the BIR, and the same be used in computing its deficiency taxes.

Thereafter, [Respondent] received a letter dated March 25, 2013 signed by Director Aranas, granting [Respondent]'s request for reinvestigation and reconsideration of the deficiency income tax and VAT assessments. The same letter, likewise, advised [Respondent] to accomplish and sign the enclosed Waiver of the Defense of Prescription of the Statute of Limitations in three (3) copies.

On April 1, 2013, Regional Director Aranas indorsed the docket back to Revenue District Office No. 79 for reinvestigation, and advised that a notarized waiver of the defense of prescription of the statute of limitations should be submitted by [Respondent] as a requirement for the reinvestigation of the case. The reinvestigation was assigned to RO Rafael S. Amores and Group Supervisor Tomas S. Rambuyon.

Hence, [Respondent] executed the waiver on April 19, 2013, which extended the assessment of taxes up to December 31, 2013. Subsequently, on May 28, 2013, another waiver was executed by [Respondent] which will expire on October 31, 2014.

On June 4, 2013, Regional Director Aranas informed [Respondent] that her letter was referred to Revenue District Office No. 79, Dumaguete City, for appropriate action.

Thereafter, RO Rafael S. Amores issued a Memorandum for the Regional Director recommending the issuance of a Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) against [Respondent].

Subsequently, RDO Carolina A. Carcallas informed [Respondent] through a letter dated July 25, 2014, that her request for reinvestigation was granted, and directed [Respondent] to submit documentary evidence within five days from receipt of the same. However, on July 29, 2014, RDO Carcallas forwarded [Respondent]'s docket to the Regional Director since the latter failed to submit documentary evidence.

On September 10, 2014, [Respondent] received the FAN/FLD dated August 28, 2014, with attached Details of Discrepancy and Transcripts of Assessment, which assessed [Respondent] with deficiency income tax and VAT for CY 2010 as follows:

I. INCOME TAX (Secs. 5, 32, 248 & 249 of NIRC as amended; RMO 13-2012)

Taxable Income per Annual ITR filed		Php 60,986.16
Add: Additional gross income		
Purchases per LN	Php 55,864,172.68	
Less: Purchases per taxpayer's declaration/ITR filed	11,768,927.65	
Under-declared Purchases	44,095,245.03	

Divided by Cost ratio per ITR filed	86.97%	
Additional Taxable Sales/Under-declared sales/revenue	50,701,673.03	
Multiply by Gross profit rate per ITR	13.03%	6,606,428.00
Total Adjusted Taxable Income		6,667,414.16
Adjusted Income Tax Due		2,098,572.53
Less: Income Tax Due per ITR filed		7,147.92
Deficiency Income Tax (Basic)		2,091,424.61
Less: IT Payment made relative to LN		119,815.78
Deficiency Income Tax Still Due (Basic)		1,971,608.83
Add: Surcharge (50%)	985,804.42	
Interest: 4.15.11-10.15.14 (.70)	1,380,126.18	2,365,930.60
Amount Payable		**Php 4,337,539.43**

II. VALUE-ADDED TAX (Secs. 5, 106, 248 & 249 of NIRC, as amended; RMO 13-2012)

Total VATable Purchases per LN		55,864,172.68
Less: VATable Purchases per taxpayer's declaration/ITR filed		11,768,927.65
Under-declared purchases for VAT purposes		44,095,245.03
Divided by Cost ratio per ITR filed		86.97%
Under-declared sales/revenue		50,701,673.03
Multiply by VAT rate		12%
VAT deficiency (Basic)		6,084,200.76
Less: VAT Payment made relative to LN		50,527.22
Deficiency VAT Still Due (Basic)		6,033,673.54
Add: Surcharge (50%)	3,016,836.77	
Interest 1.25.11 to 10.15.14 (.7444)	4,491,466.59	7,508,303.36

Amount Payable	13,541,976.90
TOTAL DEFICIENCY TAXES DUE AND COLLECTIBLE	**Php 17,879,516.33**

> Respondent filed its Request for Reconsideration of the FAN/FLD on October 9, 2014. Considering [Petitioner]'s inaction, [Respondent] filed the instant Petition for Review on May 4, 2015."[8]

The Ruling of the Second Division

On May 10, 2018, the Second Division promulgated the Assailed Decision granting the Petition for Review filed with the court *a quo*. The Assailed Decision cancelled the deficiency income tax and VAT assessment issued by Petitioner against Respondent for two (2) reasons: (1) Petitioner's right to assess has already prescribed, the subject Waivers of the Defense of Prescription Under the Statute of Limitations ("waivers") being defective and (2) the absence of a Letter of Authority ("LOA") violated Respondent's right to due process, necessarily resulting to a void assessment.

Aggrieved, Petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 10 May 2018)"[9] on May 28, 2018, which the Second Division denied in the Assailed Resolution on August 17, 2018. In denying Petitioner's motion for reconsideration, the court *a quo* found no compelling reasons to modify or amend the Assailed Decision, since Petitioner's arguments were mere reiterations.

The Proceedings in the Court of Tax Appeals En Banc

On September 05, 2018, Petitioner filed a "Motion for Extension of Time to File Petition for Review"[10], which the Court granted in a Minute Resolution dated September 21, 2018.[11]

On September 12, 2018, Petitioner filed the present "Petition for Review"[12].

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8 *Id.*, pp. 594-597.
9 *Id.*, pp. 628-643.
10 Rollo, pp. 1-5. Record shows that Petitioner received the Assailed Resolution on August 22, 2018; Docket, p. 671.
11 *Id.*, p. 6.
12 *Id.*, pp. 7-28.

On October 04, 2018, the Court issued a Resolution[13] which ordered Respondent to comment on the Petition for Review.

On November 08, 2018, Respondent filed her "Comment"[14] *via* registered mail.

On December 12 2018, the Court issued a Resolution[15] which gave due course to the Petition for Review, and ordered the parties to submit their respective memoranda.

On December 20, 2018, Petitioner filed a "Manifestation"[16] stating that he is adopting the arguments in the "Petition for Review" as his memorandum. Whereas, on January 31, 2019, Respondent filed her "Manifestation"[17] *via* registered mail, similarly stating that she is adopting her "Comment" as her memorandum.

In a Resolution[18] dated March 14, 2019, this Court noted both Petitioner's and Respondent's "Manifestation", and submitted the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) The Second Division erred in ruling that estoppel cannot apply in the instant case; and

2) The Second Division erred in ruling that the absence of an LOA violated Respondent's right to due process.[19]

The Arguments of Parties

Petitioner mainly avers that estoppel applies in the instant case for Respondent performed acts showing her awareness that the waivers were

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13 *Id.*, pp. 79-80.
14 *Id.*, pp. 81-108.
15 *Id.*, pp. 110-111.
16 *Id.*, pp. 112-115.
17 *Id.*, pp. 117-121.
18 *Id.*, pp. 123-124.
19 *Id.*, p. 10.

accepted by the BIR. Moreover, Petitioner claims that Respondent never questioned the validity of the waivers during the conduct of the audit investigation. Thus, Respondent should not be allowed to impugn their legality after benefitting from them, applying *Commissioner of Internal Revenue v. Next Mobile*[20] ("*Next Mobile*").

Petitioner also adds that under Revenue Memorandum Order ("RMO") No. 14-16[21], prior acceptance by Respondent is not necessary in order for the waiver to be valid and effective. Rather, the waiver takes effect upon the execution thereof, the same executed at the instance of the taxpayer.

Furthermore, Petitioner submits that the revenue officer assigned has authority to conduct the audit investigation on Petitioner's tax liability for taxable year 2010. An LOA under Section 13 of the National Internal Revenue Code ("NIRC") of 1997, as amended, is not applicable in the case at bar for there was no actual examination of the books of Respondent. A Letter Notice ("LN") already suffices for a "no-contact audit approach" examination under RMO No. 30-03[22].

Lastly, Petitioner contends that the law of agency should be applied in this case. Citing the Dissenting Opinion in *Medtecs International Corporation Limited v. Commissioner of Internal Revenue*[23] ("*Medtecs*"), Petitioner posits that although the LN was not entitled as an LOA, it contains all the elements necessary to establish a contract of agency between the CIR and the revenue officer assigned.

On the other hand, Respondent in her Comment counters that Petitioner failed to raise valid grounds to warrant the reversal of the court *a quo*'s rulings. *First*, a waiver is strictly construed because it is a bilateral agreement between two parties, as enunciated in RMO No. 20-90. *Second*, estoppel does not apply because the two (2) waivers were not solicited or requested by Respondent, but by Petitioner. *Third*, the absence of an LOA violated Respondent's right to due process. A "no-contact audit approach" is an examination of a taxpayer. Section 6(A) of the NIRC of 1997, as amended, clearly provides that a representative of the Commissioner can only perform an examination through an authorization by the latter (*i.e.*, LOA). *Lastly*, assuming that there was an LOA, Petitioner's assessment is still invalid for lack of factual bases.

<u>The Ruling of the Court</u>

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20 G.R. No. 212825, December 07, 2015.

21 Subject: Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended, Dated April 04, 2016.

22 Subject: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purpose, Dated September 18, 2003.

23 CTA EB Nos. 1560 & 1561 (CTA Case No. 8538), March 13, 2018.

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision promulgated 10 May 2018)", on August 17, 2018. Petitioner received said Resolution on August 22, 2018. Pursuant to Rule 4, Section 2(a)(1)[24] in relation to Rule 8, Section 3(b)[25] of the Revised Rules of the Court of Tax Appeals[26] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until September 06, 2018 within which to file his petition for review.

On September 05, 2018, Petitioner timely filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days or until September 21, 2018 within which to file the petition for review. The Court granted the same in a Minute Resolution dated September 07, 2018.

On September 12, 2018, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a reproduction of the Motion for Reconsideration (Re: Decision promulgated 10 May 2018)"[27] filed by Petitioner on May 28, 2018 before the Second Division, which the latter noted as mere rehash of the grounds and arguments already passed upon and resolved in the Assailed Decision.[28] Furthermore, the court *a quo* painstakingly

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[24] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[25] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(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. (Rules of Court, Rule 42, sec. 1a)

[26] A.M. No. 05-11-07-CTA, November 22, 2005.

[27] Docket, p. 673.

[28] *Id.*, Resolution dated August 17, 2018, p. 673.

addressed Petitioner's contentions in the Assailed Resolution. Nevertheless, we will discuss at length, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Petitioner's right to assess Respondent for the alleged tax deficiencies for taxable year 2010 had already prescribed

Section 203 of the NIRC of 1997, as amended, mandates that Petitioner should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3) year prescriptive period shall not be valid, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – **Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."[29]

Nevertheless, Section 222(b) of the NIRC of 1997, as amended, provides that the prescriptive period in Section 203 may be extended by way of a written agreement between the taxpayer and the CIR, entered validly into before the lapse of the said period, *viz.*:

> "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, **<u>both the Commissioner and the taxpayer have agreed in writing</u> to its assessment after such time, the tax may be assessed within the period agreed**

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[29] *Emphasis and underscoring supplied.*

> **upon**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."[30]

Section 222(b) above was later implemented by the BIR through RMO No. 20-90[31], to wit:

> "Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. **This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed**:
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> xxx xxx xxx
>
> 2. **The waiver shall be <u>signed</u> <u>by</u> <u>the</u> <u>taxpayer</u> himself or his duly authorized representative.** In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> **Soon after** the waiver is signed by the taxpayer, **the <u>Commissioner</u> <u>of</u> <u>Internal</u> <u>Revenue</u> or the revenue official authorized by him**, as hereinafter provided, **<u>shall</u> <u>sign</u> <u>the</u> <u>waiver</u> indicating that the Bureau has accepted and agreed to the waiver**. The date of such acceptance by the Bureau should be indicated. <u>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</u>."[32]

The above RMO No. 20-90 was later modified by Revenue Delegation Authority Order ("RDAO") No. 05-01[33], *viz*:

> "*I. Revenue Officials Authorized to Sign the Waiver*

[30] *Emphasis and underscoring supplied.*
[31] Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, Dated April 04, 1990.
[32] *Emphasis and underscoring supplied.*
[33] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, Dated August 02, 2001.

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

xxx xxx xxx

The authorized revenue official shall 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. 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. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized."[34]

Likewise, Revenue Memorandum Circular ("RMC") No. 06-05[35] provides for the following:

"For the information and guidance of all internal revenue officers, employees and others concerned, the following are the salient features of the decision of the Supreme Court in the case of Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, G.R. No. 162852, promulgated on December 16, 2004, to wit:

1. **A waiver of the statute of limitations under the Tax Code must conform strictly with the provisions of Revenue Memorandum Order No. 20-90 in order to be valid and binding.**

1.1. The waiver must specify a definite agreed date between the BIR and the taxpayer within which the former may assess and collect revenue taxes.

1.2. **The waiver must be accepted by the Commissioner of Internal Revenue** or his duly authorized representative, **and the date of acceptance must be indicated.**

[34] *Emphasis and underscoring supplied.*
[35] Salient Features of Supreme Court Decision on Waiver of the Statute of Limitations under the Tax Code, Dated February 2, 2005.

1.3. **The taxpayer must be furnished a copy of the waiver accepted by the BIR.**

2. A waiver of the statute of limitations under the Tax Code, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.

3. A waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain.

4. A waiver of the statute of limitations is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties."[36]

Based on the above provisions, in order to be valid and binding, a waiver must be signed by both parties before the lapse of the prescriptive periods to assess, and that the taxpayer must be given a copy of the waiver accepted by the BIR. Moreover, this has been the ruling laid down by the Supreme Court in a number of cases when the High Court invalidated waivers on the ground that the same were not accepted by the BIR and the taxpayer was not given a copy of the accepted waiver.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[37], the waiver was declared invalid because: (1) it did not specify the date within which the BIR may assess and collect the taxes, such that the waiver became unlimited in time, (2) it was signed only by a revenue district officer, and not the CIR, (3) there was no date of acceptance, and (4) the taxpayer was not furnished a copy of the waiver.

In *Commissioner of Internal Revenue v. FMF Development Corporation*[38], the waiver was found defective and thus did not validly extend the original three-year prescriptive period because: (1) it was not proven that the taxpayer was furnished a copy of the waiver, (2) it was signed only by a revenue district officer, and not the CIR as mandated by law, and (3) it did not contain the date of acceptance by the CIR, which is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.

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[36] *Emphasis and underscoring supplied.*
[37] G.R. No. 162852, December 16, 2004.
[38] G.R. NO. 167765, June 30, 2008.

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*[39], the waivers were found defective for the following reasons: (1) the waivers were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf, (2) the waivers failed to indicate the date of acceptance, and (3) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*[40], the waivers were invalidated because the following requisites were absent: (1) conformity of either the CIR or a duly authorized representative, (2) date of acceptance showing that both parties had agreed on the waiver before the expiration of the prescriptive period, and (3) proof that the taxpayer was furnished a copy of the waiver.

Recently, the Supreme Court in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[41] affirmed this Court's declaration that the two (2) waivers executed were void due to the CIR's failure to furnish signed copies of the accepted waivers to the taxpayer.

Applying in the instant case the requisites laid down by law, regulations and jurisprudence for a valid waiver, two (2) significant things are worth mentioning. One, the two (2) waivers executed by Respondent on April 19, 2013 and May 28, 2013 did not indicate the date of acceptance by the BIR nor the fact of receipt by Respondent of the accepted waiver. Additionally, the three (3) copies of the waivers executed were still attached to the BIR Records of the case.[42] Thus, it cannot be determined whether: (1) the waivers were validly accepted before the expiration of the original three-year period, and (2) Respondent was notified of such alleged acceptance.

Considering that Petitioner failed to strictly conform with the provisions of RMO 20-90, RDAO 05-01, and RMC No. 06-05, both the first and second waiver were defective and would not be able to extend the prescriptive period to assess.

Presuming that Respondent's Income Tax Return and VAT returns were filed on or before their deadlines as required by law[43], the expiration date of the 3-year period to assess is set forth below:

RETURNS FOR 2010	**PRESUMED DATE OF FILING**	**EXPIRATION DATE OF THE 3-YEAR PERIOD**	**DATE OF ISSUANCE**

[39] G.R. No. 178087, May 05, 2010.
[40] G.R. No. 187589, December 03, 2014.
[41] G.R. Nos. 201398-99 and 201418-19, October 03, 2018.
[42] BIR Records, Exhibits "R-8" and "R-9", pp. 178-180 and 181-184.
[43] Rules of Court, Rule 131, Section 3(ff).

		TO ASSESS	OF THE FAN/FLD
Annual Income Tax Return	April 15, 2011	April 15, 2014	August 28, 2014
First Quarter Quarterly VAT Return	April 25, 2010	April 25, 2013	
Second Quarter Quarterly VAT Return	July 25, 2010	July 25, 2013	
Third Quarter Quarterly VAT Return	October 25, 2010	October 25, 2013	
Fourth Quarter Quarterly VAT Return	January 25, 2011	January 25, 2014	

From the foregoing, clearly, Petitioner's right to assess Respondent has already prescribed when the Final Assessment Notice/Formal Letter of Demand ("FAN/FLD") was issued.

Petitioner insists however that notwithstanding the defects in the waivers, the doctrine in *Next Mobile* and the principle of estoppel (in assailing the validity of the waivers) applies in this case.

We do not agree. To be sure, *Next Mobile* has carved an exception to the strict application of RMO 20-90 and RDAO 05-01, due to the peculiar circumstances therein. And yet, the Court does not find the instant case falling under the said exception.

First, the defect in the waivers was solely caused by Petitioner himself. If he only indicated the date of acceptance and he furnished Respondent a copy of the accepted waivers, then they should have been valid. Since Petitioner violated his own rules, *pari delicto* does not apply and he must bear the consequence of a defective waiver.

Second, as found by the Second Division, Respondent did not voluntarily execute the waivers.[44] The execution of the waivers did not come from Respondent herself. Rather, it was Petitioner who directed Respondent to accomplish a notarized waiver as a requirement for the reinvestigation of the case as stated in the Letter dated March 25, 2013 and 1st Indorsement dated April 01, 2013.[45]

[44] Docket, Resolution, pp. 674-675.
[45] BIR Records, Exhibits "R-15" and "R-16", pp. 142 and 139.

And third, Respondent did not benefit from the waivers executed. Quite the opposite, there was even an increase in the assessed deficiency taxes from Php15,344,846.76 in the Preliminary Assessment Notice ("PAN")[46] to Php17,879,516.33 in the FAN/FLD[47].

Petitioner's insistence of applicability of RMO 14-16 is also bereft of merit. True enough, RMO 14-16 considerably revised the guidelines for the execution of waivers at present. Among others, it states that "the waiver is a voluntary act of the taxpayer" and that it "shall take legal effect and be binding on the taxpayer upon its execution". Nonetheless, this does not acquit Petitioner of his obligation to indicate the date of acceptance in the waivers executed on April 19, 2013 and May 28, 2013, and furnish Respondent an accepted copy thereof.

For one, RMO 14-16 took effect only in 2016. The taxable period involved in this case pertains to 2010 and the waivers were executed in 2013. Hence, the relevant BIR issuance which should be observed in executing the waivers is RMO 20-90, as amended by RDAO 05-01 and RMC No. 06-05, and not RMO 14-16.

More importantly, RMO 14-16 as a revenue issuance should not contravene rules of law. When the implementing rules and regulations issued by the Executive contradicts what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power.[48]

As previously discussed, a **waiver** is anchored on Section 222(b) of the NIRC of 1997, as amended, which states that it **is an agreement between the CIR and the taxpayer** to extend the period within which to issue an assessment. Read together with the principles of law on contracts[49], a waiver (as a contract or an agreement) must have both the consent of the contracting parties.[50] Under Article 1319 of the Civil Code of the Philippines, "consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract". The said article also provides that "acceptance made by letter does not bind the offeror except from the time it came to his knowledge".

[46] Docket, Exhibits "P-7" and "P-7-a", pp. 363 and 364.
[47] *Id.*, Exhibits "P-2" and "P-2-a", pp. 344 and 345.
[48] Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares v. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation, G.R. No. 210588, November 29, 2016.
[49] Civil Code of the Philippines, Book IV, Title II.
[50] Civil Code of the Philippines, Book IV, Title II, Chapter 2:

Article 1318. There is no contract unless the following requisites concur:
(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established. (1261).

Therefore, a waiver cannot be perfected without the acceptance by the BIR (as the offeree) prior to the expiration of the relevant period. Additionally, the taxpayer must be furnished with a copy of the accepted waiver for the following reasons: (1) to give notice of the acceptance by the BIR, and (2) to signal the perfection of the agreement.[51]

The assessment issued by Petitioner against Respondent is void in the absence of a valid LOA.

Assuming, without conceding that Petitioner's right to assess has not yet prescribed, further examination of the evidence presented by the parties reveals that the authority of the revenue officer to conduct an audit examination and, thereafter, issue assessment notices if warranted, was only made pursuant to LN No. 079-RLF-10-00-00025[52] dated June 14, 2012.

Perforce, **there must be a grant of authority before any revenue officer can conduct an examination or issue an assessment**.[53] In this aspect, a valid grant of authority from the CIR or his duly authorized representative before a revenue officer conducts an examination or issue an assessment is in the form of an LOA.[54]

Section 13[55] of the NIRC of 1997, as amended, in relation to RMO No. 32-05[56] prescribes procedures in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes, *viz.*:

"IV. POLICIES AND GUIDELINES

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51 Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 and 201418-19, October 03, 2018 *citing* Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

52 Docket, Exhibit "P-2", p. 340.

53 Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

54 Sec. 13, NIRC of 1997, as amended.

55 **SEC. 13.** *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

56 Subject: Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes, Dated November 24, 2005.

xxx xxx xxx

> 8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.
>
> **9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA) to replace the LN**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex 'E' hereof) to the OACIR-LTS I ORD for the preparation of the corresponding LAs with the notation 'This LA cancels LN__________ No.'"[57]

In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[58] ("*Medicard*"), the Supreme Court held that under RMO No. 32-05, the previously issued LN should be converted to an LOA first before a revenue officer proceeds with the further examination and assessment of the taxpayer. The pertinent parts of the decision state:

> "In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid x x x.
>
> xxx xxx xxx
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the

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[57] *Emphasis supplied.*
[58] G.R. No. 222743, April 05, 2017.

revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case."[59]

In the present case, LN No. 079-RLF-10-00-00025 dated June 14, 2012 was issued by Petitioner against Respondent, informing her of a 100% discrepancy between her VAT returns and information provided by third party sources for taxable year 2010 amounting to Php55,864,172.68.[60] A Notice of Informal Conference[61], PAN[62] and FAN/FLD[63] were issued pursuant to the said LN. Evidently, the authority of the revenue officer to conduct an examination of Respondent's tax liabilities is already lacking since the beginning. Under RMO No. 32-05, the LN should have been converted to a LOA before proceeding with the further examination of Respondent and issuance of assessment against her.

Accordingly, considering that the examination and assessments were issued pursuant only to a LN, the income tax and VAT assessments are void for lack of authority.

Finally, We find it imperative to point out that Petitioner misconstrued the Dissenting Opinion in *Medtecs*. Petitioner is of the incorrect notion that an LN, although not entitled as an LOA, is equivalent to an LOA.

As pointed out in *Medicard*, a LN is a mere notification from the BIR to a taxpayer informing the latter that "a discrepancy is found based on the BIR's RELIEF System" through the computerized matching conducted between the taxpayer's return/s and third-party sources. In contrast, an LOA assigns a particular revenue officer to examine the books of account and other accounting records of a taxpayer for a particular type of tax for a specific taxable period. These two are separate and distinct from one another, and cannot be interchangeable.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on September 12, 2018 is **DENIED** for lack of merit. Accordingly, the May 10, 2018 Decision and August 17, 2018 Resolution in CTA Case No. 9036 are **AFFIRMED**.

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59 *Emphasis supplied.*
60 Docket, Exhibit "P-2", p. 340.
61 *Id.*, Exhibit "P-6", p. 362.
62 *Id.*, Exhibits "P-7" and "P-7-a", pp. 363 and 364.
63 *Id.*, Exhibits "P-2" and "P-2-a", pp. 344 and 345.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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