REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TEKTITE INSURANCE BROKERS, INC., *Petitioner,*	**CTA *EB* NO. 1923** *(CTA Case No. 8903)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 23 2020 8:30 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8***[2] ***of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[3] asking the Court to set aside the Decision promulgated on 3 November 2017, Amended Decision dated 12 April 2018, and Resolution dated 3 August 2018 by the First Division ("Court in Division"), and to order the respondent to cancel the deficiency tax assessments under Formal Letter of Demand No. 043A-

[1] See Petition for Review, *Rollo,* Vols. 1-2, pp. 1-917, with annexes.

[2] "SECTION 3. *Who May Appeal; Period to File Petition.* —

xxx xxx 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."

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

B020-10 with Assessment Notices dated 18 June 2014 for taxable year ending 31 December 2010 ("TY 2010").

The Parties

Petitioner Tektite Insurance Brokers, Inc. is a corporation organized under Philippine laws with principal place of business at the 20th Floor, East Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.

It is engaged in the business of insurance brokerage and is authorized to render such service by the Insurance Commission. It is registered with the Bureau of Internal Revenue ("BIR") on 11 April 1997 and was issued Tax Identification Number ("TIN") 000-188-338-000.

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (hereinafter referred to as the "Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

Petitioner received Letter of Authority ("LOA") No. LOA-43A-2012-00000255, dated 1 March 2012, authorizing the examination of its books of accounts and other accounting records for TY 2010. Likewise, petitioner received a Checklist of Requirements for Presentation of Records dated 5 March 2012.[4]

Thereafter, on 22 November 2013, petitioner received a Notice for Informal Conference ("NIC").[5] In response, the petitioner submitted a letter on 23 December 2013 (hereinafter referred to as "Reply to NIC").[6]

Subsequently, on 5 February 2014, petitioner submitted to the BIR a Letter, dated 4 February 2014, attaching thereto a copy of its 2009 Annual Income Tax Return.[7]

On 11 February 2014, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("Waiver") extending the prescriptive period to assess petitioner for all internal revenue tax liabilities for TY 2010 until 31 October 2014.[8]

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4 See Decision, *Rollo*, Vol. 1, pp.45-63.
5 *Ibid.*
6 *Ibid.*
7 *Ibid.*
8 *Ibid.*

On 2 June 2014, petitioner received a Preliminary Assessment Notice ("PAN"), dated 30 May 2014, with attached Details of Discrepancies.[9]

Thereafter, petitioner filed its one (1) page Protest to the PAN on 4 June 2014 stating that: "We respectfully submit our Protest to the Preliminary Asssessment Notice (PAN) dated May 30, 2014, copy of which was received by Tektite Insurance Brokers, Inc. (TIBI) on June 2, 2014, in relation to the tax audit investigation of TIBI for taxable year ended December 31, 2010. Relative thereto, may we request for re-investigation by the examiner so TIBI can substantiate its protest to the assessment".[10]

On 18 June 2014, petitioner received Assessment Notices ("FAN") and Formal Letters of Demand ("FLD") assessing it for deficiency income tax, interest, and compromise penalty for failure to submit Summary List of Income Payments ("SLI"), Summary List of Sales ("SLS") and Summary List of Purchases ("SLP") in the aggregate amount of ₱420,988.65 for TY 2010, broken down as follows:

Basic Income Tax Assessment	₱ 247,810.19
Interest	161,178.46
Compromise Penalty	12,000.00
TOTAL	**₱ 420,988.65**

On 24 June 2014, petitioner filed its Protest to the FAN consisting of 1 page, stating that "We respectfully submit our Protest to the Preliminary Asssessment Notice (PAN) dated June 18, 2014, copy of which was received by Tektite Insurance Brokers, Inc. (TIBI) on June 18, 2014, in relation to the tax audit investigation of TIBI for taxable year ended December 31, 2010. Relative thereto, may we request for re-investigation by the examiner so TIBI can substantiate its protest to the assessment".[11]

On 8 September 2014, petitioner received a Letter, dated 29 August 2014, signed by Regional Director Alfredo Y. Misajon, informing petitioner that its request for reinvestigation of the assessment for TY 2010 was not in compliance with the provisions of Revenue Regulation ("RR") No. 12-99, as amended by RR No. 18-2013. In view thereof, the FAN and FLD have become final, executory, and demandable. The Letter further states that it is the BIR's final decision on the matter.[12]

Aggrieved, petitioner filed a Petition for Review before the Court in Division on 8 October 2014. It raised the following issues, as follows:

[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

a. Whether or not the PAN dated 30 May 2014 and FAN and FLD dated 18 June 2014 issued against petitioner for TY 2010 are void for not having been issued within the three (3) year prescriptive period under Section 203 of the Tax Code;

b. Whether or not the Waiver executed on 11 February 2014 validly extended the period for the BIR to assess petitioner for deficiency internal revenue taxes for TY 2010;

c. Whether or not petitioner is liable for deficiency income tax, and interest in the amount of ₱408,988.65 for TY 2010;

d. Whether or not petitioner is liable for compromise penalty in the amount of ₱10,000.00 for failure to submit SLS and SLP for TY 2010; and

e. Whether or not petitioner is liable for compromise penalty in the amount of ₱2,000.00 for failure to submit SLI.[13]

On 3 November 2017, the Court in Division promulgated the assailed Decision denying the original Petition for Review,[14] as follows:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Tektite Insurance Brokers, In. is hereby **DENIED**. Accordingly, the Assessment Notices and Formal Letters of Demand No. 043A-B020-10 with Details of Discrepancies, assessing petitioner for deficiency income tax, interest and compromise penalty for taxable year ending December 31, 2010 and the Letter dated August 29, 2014 (Final Decision), signed by Regional Director Alfredo Y. Misajon, stating that the aforesaid Assessment Notices and Formal Letters of Demand have become final, executory and demandable, as **AFFIRMED**.
>
> Petitioner is **ORDERED** to **PAY** respondent the basic deficiency income tax of ₱247,810.19 and compromise penalty for failure to submit SLS/SLP of ₱12,000.00
>
> In addition, petitioner is **ORDERED** to **PAY**:
>
> (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱247,810.10, computed from April 16, 2011, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱247,810.10, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from July 18, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**"

[13] *Ibid.*
[14] *Ibid.*

Thereafter, on 22 November 2017, the petitioner filed his Motion for Reconsideration with Motion to Present Evidence in Support of the Motion for Reconsideration.[15]

On 12 April 2018, the Court in Division issued the assailed Amended Decision[16] modifying the computation of the deficiency and delinquency interest in light of the effectivity of the TRAIN Law, to wit:

> "**WHEREFORE**, premises considered, petitioner's "**Motion for Reconsideration with Motion to Present Evidence in Support of the Motion for Reconsideration**" is **PARTIALLY GRANTED.**
>
> The dispositive portion of the assailed Decision is hereby **MODIFIED** to read, as follows:
>
> The Assessment Notices and Formal Letters of Demand No. 043A-B020-10 with Details of Discrepancies, assessing petitioner for deficiency income tax, interest and compromise penalty for taxable year ending December 31, 2010 and the Letter dated August 29, 2014 (Final Decision), signed by Regional Director Alfredo Y. Misajon, stating that the aforesaid Assessment Notices and Formal Letters of Demand have become final, executory and demandable, are **AFFIRMED** with **MODIFICATION.**
>
> Tektite Insurance Brokers, Inc. is **ORDERED** to **PAY** the Bureau of Internal Revenue basic deficiency income tax in the amount of P247,810.19 and compromise penalty for failure to submit SLS/SLP of P12,000.00.
>
> Petitioner is also **ORDERED** to **PAY** the Bureau of Internal Revenue the following deficiency and delinquency interest, computed in accordance with the provision of Section 249 of the NIRC of 1997, as amended by RA No. 10963 (TRAIN law), viz.:
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> (a) **Deficiency interest** at the rate of twelve percent (12%) per annum on the basic deficiency income tax of P247,810.19, computed from April 16, 2011, the date prescribed for payment, until <u>June 18, 2014</u>, the date of Tektite Insurance Brokers, Inc.'s receipt of Assessment Notices and Formal Letters of Demand No. 043A-B020-10, dated June 18, 2014, pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963; and,
>
> (b) **Delinquency interest** at the rate of 12% per annum on the basic deficiency income tax in the amount of P247,810.10 and on the 12% deficiency interest which have accrued as aforestated in (a) above, computed from <u>July 18, 2014</u>, the due date appearing in the Assessment Notices and Formal Letters of Demand No. 043A-8020-10, until the amount is fully paid, pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED**."

[15] See Amended Decision, *Rollo*, Vol. 1, pp. 64-75.
[16] *Ibid.*

On 7 May 2018, petitioner filed a Motion for Reconsideration on the Amended Decision. The same was denied by the Court in Division in the assailed Resolution promulgated on 3 August 2018.[17] The assailed Resolution was received by the petitioner on 15 August 2018.

Petitioner filed the instant Petition for Review on 30 August 2018.[18] The respondent did not file his Comment.[19]

On 29 January 2019, the Court *En Banc* issued a Resolution directing the parties to file their respective Memoranda.[20]

Petitioner filed its Memorandum on 21 February 2019,[21] while respondent failed to file his Memorandum.[22]

On 11 April 2019, the Court *En Banc* promulgated a Resolution submitting the case for decision.[23] Hence, this Decision.

The Issues

WHETHER OR NOT THE FAN IS VOID FOR HAVING BEEN ISSUED PURSUANT TO A TAX AUDIT CONDUCTED WITHOUT A VALID LOA;

WHETHER OR NOT THE COURT IN DIVISION GRAVELY ERRED THAT THE SUBJECT WAIVER EXTENDED THE RIGHT OF THE BIR TO ASSESS PETITIONER FOR TY 2010;

WHETHER OR NOT THE COURT IN DIVISION GRAVELY ERRED IN RULING THAT PETITIONER IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE SUBJECT WAIVER UNDER THE PRINCIPLE OF *IN PARI DELICTO*;

WHETHER OR NOT THE COURT IN DIVISION GRAVELY ERRED IN RULING THAT PETITIONER FAILED TO FILE A VALID PROTEST;

WHETHER OR NOT THE COURT IN DIVISION GRAVELY ERRED IN NOT CONSIDERING THAT PETITIONER IS NOT LIABLE FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF ₱408,988.65 FOR TY 2010; AND

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[17] See Resolution dated 3 August 2018, *Rollo*, Vol. 1, pp. 76-77.
[18] Petition for Review, *Rollo*, Vols. 1-2, pp. 1-917, with annexes.
[19] Records Verification, *Rollo*, Vol. 2, p. 921.
[20] Resolution dated 29 January 2019, *Rollo*, Vol. 2, pp. 923-924.
[21] Memorandum, *Rollo*, Vol. 2, pp. 925-971.
[22] Records Verification, *Rollo*, Vol. 2, p. 973.
[23] Resolution dated 11 April 2019, *Rollo*, Vol. 2, p. 975.

WHETHER OR NOT THE COURT IN DIVISION GRAVELY ERRED IN NOT CONSIDERING THAT PETITIONER IS NOT LIABLE FOR COMPROMISE PENALTIES IN THE AMOUNT OF ₱12,000.00 FOR TY 2010.[24]

Arguments of the Parties[25]

Petitioner argues that the PAN, FAN, and FLD are void *ab initio* for having been issued pursuant to an expired LOA. It explains that the LOA had already expired since it was not revalidated by the BIR when the audit continued for more than 120 days counting from the issuance of the LOA.

Further, petitioner insists that it is not estopped from questioning the validity of the Waiver. It explains that contrary to the findings of the Court in Division, it is not precluded from raising the defects of the Waiver for the first time on appeal. It also argues that a taxpayer can only be estopped from questioning the Waiver when it too benefited from its issuance. In this case, petitioner alleges that it was only the BIR which solely benefited from the issuance of the Waiver. The petitioner explained that during its audit, the BIR was already in inordinate delay, hence it needed to extend the prescriptive period to finish its audit of the petitioner.

Petitioner contends that it cannot be *in pari delicto* with the BIR. It argues that the defects on the Waiver is solely attributable to the BIR. Petitioner explains that its participation is only limited to the signing of the prescribed form of the Waiver made by the BIR.

It also adds that the Waiver is defective and, therefore, did not extend the period to assess petitioner. It alleges that the Waiver was not signed by the respective authorized representatives of the petitioner and the BIR. Neither did it contain the kind and amount of tax subject of the Waiver, as required by Tax regulations and issuances.

Petitioner contends that, even assuming that the Waiver is valid, it is still not liable for the deficiency taxes and penalties. Petitioner explains that the income tax assessment issued against it is void since the BIR failed to inform the petitioner of the law and the facts on which the assessment was based. It also contends that the assessment against it for unsubstantiated Creditable Withholding Tax ("CWT") is baseless since it was able to provide the supporting BIR Forms No. 2307 as proof of its entitlement.

Finally, petitioner argues that it is not liable for compromise penalty since it did not consent to paying the same and that the payment of compromise penalty is only applicable in criminal and not in civil cases. Assuming otherwise, petitioner posits that the assessment pertaining to the

[24] See Grounds in the Petition for Review; *Rollo*, Vol. 1, pp. 11-12.
[25] See Petition for Review; *Rollo*, pp. 7-74.

compromise penalty is without basis considering that it is not obliged to submit SLS and SLP per tax regulation. As for the SLI, petitioner contends that it already submitted the same to the BIR for TY 2010.

The Ruling of the Court

After going through the arguments interposed by the petitioner, the Court *En Banc* finds the instant Petition without merit.

Failure to revalidate the LOA did not affect its validity. Hence, the assessments issued against the petitioner are valid.

Citing the cases of ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation***[26] (hereinafter referred to as "McDonalds Case") and ***GS MTE Grains Corporation v. Commissioner of Internal Revenue***,[27] (hereinafter referred to as "GS MTE Case") petitioner contends that the LOA already expired since the revenue officer who conducted the audit for more than 120 days from the issuance of the LOA did not submit the same for revalidation (hereinafter referred to as "Revalidation Rule").

Petitioner submits that the BIR only issued the NIC on 22 November 2013, which is more than one year and six months after the issuance of the LOA on 1 March 2012. Considering that the LOA was not revalidated, petitioner argues that it is already invalid and consequently the resulting assessment void.

The contention of the petitioner is without merit.

In both McDonalds and GT MTE Cases, the Court cited ***BIR's General Audit Procedures and Documentation ("BIR GAPD")*** as basis for the Revalidation Rule which provides, to wit:

> "How much time does a Revenue Officer have to conduct an audit? A Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation."

However, in the recent case of ***Commissioner of Internal Revenue v. GS MTE Grains Corporation***[28] which is the appealed case of the GS MTE

[26] CTA *EB* Case No. 1535, 4 January 2018.
[27] CTA Case No. 8837, 19 March 2018.
[28] CTA *EB* Case No. 1958, 6 June 2020.

Case, the Court *En Banc* clarified that the applicable rule for the revalidation of an LOA issued starting 3 July 2007 to 31 May 2010 is ***Revenue Memorandum Order ("RMO") No. 12-2017***,[29] which provides:

> "29. Reports of investigation of cases covered by LAs/ANs/TVNs shall be submitted by the RO within the following prescribed number of calendar days from the date of LAs/ANs/TVNs:
>
> | Cases other than VAT claims for refund/credit: | No. of Days |
> |---|---|
> | Very Large/Large | 120 |
> | Medium | 90 |
> | Small/TVN | 60 |
> | Cases covering claims for VAT refund/credit | 120 days from the submission of complete documents |
>
> 30. In case the report of investigation cannot be rendered within the aforementioned time frame due to constraints attributable to the taxpayer, the RO may request for the revalidation of the LA by preparing a progress report with a valid reason for the request for revalidation, duly noted by the Group Supervisor and approved by the RDO. The RDO shall transmit the entire docket of the case, including all notices with checklist of documentary requirements served to the taxpayer, to the RD for revalidation of the LA. The previously issued LA shall be stamped "Revalidated on ________" and shall be signed by the RD.
>
> The revalidation of LA shall give rise to the extension of the period within which the concerned RO shall submit the required report of investigation to higher authorities for review and approval without the imposition of applicable administrative sanctions. **Failure on the part of the RO to request for revalidation or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO.**"[30]

Hence, the failure of the revenue officer to revalidate the LOA did not render the same void and, correspondingly, did not affect the validity of the assessment. At most, the consequence of violating the Revalidation Rule is to expose the revenue officer to disciplinary action.

Furthermore, it is worth mentioning that nowhere in the BIR GAPD was it mentioned that the LOA will be rendered invalid or ineffective should the revenue officer fail to follow the Revalidation Rule.

Therefore, on the basis of the foregoing, we find that the failure of the BIR to revalidate petitioner's LOA did not affect its validity nor the assessment made pursuant to the same.

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[29] Subject: 2007 Audit Program for Revenue District Offices, 3 July 2017.
[30] Emphasis supplied.

The Waiver validly extended the prescriptive period to assess the petitioner.

Petitioner argues that the Court in Division erred in ruling that both parties caused the infirmities on the Waiver, rendering the general rule on void Waivers inapplicable and thereby giving full effect to the defective Waiver.

It argues that in the case of ***Commissioner of Internal Revenue v. Avon Products Manufacturing Inc.,***[31] the Court *En Banc* ruled that a taxpayer may only be estopped from questioning the validity of a waiver when it is proven that it also benefited from the issuance of the same.

Unlike in the Avon Case, petitioner explains that it did not benefit from the issuance of the Waiver. It only signed the Waiver so as not to antagonize the BIR. Petitioner argues that it was only the BIR which benefited from the issuance of the Waiver, since it needed more time to cure its inordinate delay in completing petitioner's audit.

Petitioner also insists that the case of ***Commissioner of Internal Revenue v. Next Mobile, Inc., (formerly Nextel Communications Phils., Inc.)*** (hereinafter referred to as "Next Mobile Case")[32] is inapplicable to the present case. Instead the applicable jurisprudence is ***Commissioner of Internal Revenue v. Philippine Daily Inquirer,***[33] where the Supreme Court ruled that a defective waiver is void and consequently do not extend the prescriptive period to assess the taxpayer.

In this case, petitioner points out that the Waiver is defective due to the following reasons:

1. The Waiver was not signed by an authorized representative of the petitioner. Petitioner alleged that the waiver was signed by its President-Mr. Antonio Reyes-Cuerva who is not armed with a notarized written authority;

2. The Waiver was not signed by the authorized BIR Revenue Officer. In this case, petitioner insists that the Waiver was signed by the Revenue District Officer and the revenue officers in charge of the audit, and not by the Regional Director; and

3. The Waiver failed to specify the kind and amount of tax that is subject of the Waiver. In this case, only the phrase "all internal revenue taxes liabilities" was indicated in the Waiver.

The Court finds the arguments of the petitioner unmeritorious.

[31] CTA EB Case Nos. 661 and 663, 10 April 2012.
[32] G.R. No. 212825, 7 December 2015.
[33] G.R. No. 213943, 22 March 2017.

It is a settled rule 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.[34] This written agreement is known as the Waiver.

Considering that the issuance of the Waiver is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, its issuance must therefore be carefully and strictly construed.[35] Hence, in the case of ***Commissioner of Internal Revenue v. Kudos Metal Corporation***,[36] the Supreme Court ruled that the waiver must be executed in strict compliance with the procedures laid down under Revenue Memorandum Order ("RMO") No. 20-90[37] and Revenue Delegation Authority Order ("RDAO") No. 05-01,[38] or else the resulting Waiver is considered void and the three-year prescriptive period to assess is deemed not extended.

As mentioned above, the petitioner cited three defects that it alleges to have rendered the Waiver void. However, the Court *En Banc* is not convinced with the arguments raised by the petitioner.

In the case of ***Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated***, (hereinafter referred to as "Stanley Works Case")[39] the Supreme Court enumerated the requisites of a valid 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.
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> 3. The waiver should be duly notarized.

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[34] SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
(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.

[35] Commissioner of Internal Revenue v. Kudos Metal Corporation, G.R. No. 178087, 5 May 2010.

[36] *Ibid.*

[37] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, 4 April 1990.

[38] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations, 2 August 2001.

[39] G.R. No. 187589, 3 December 2014 citing CIR v. Kudos Metal Corporation, G.R. No. 178087, 5 May 2010, citing Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, 16 December 2004.

> 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."

As for the first requisite, the BIR clarified in ***Revenue Memorandum Circular ("RMC") No. 29-12,***[40] that the form of the Waiver prescribed under RMO No. 20-90 no longer applies starting 2 August 2001, but the revised form as prescribed under RDAO No. 05-01, to wit:

> "The aforecited Supreme Court decision pertains to a case involving a tax assessment for the year 1994 and a waiver executed in 1997. Thus, in resolving the case, the relevant BIR issuance is RMO No. 20-90 and not RDAO No. 05-01 which took effect only in 2001.
>
> **The provisions of RMO No. 20-90 should be strictly complied with in order for a Waiver to be valid. However, the Waiver form prescribed in RMO No. 20-90 should no longer be used as the same has been revised per RDAO No. 05-01**."[41]

Hence, based on the aforementioned requisites, we shall now address the issues raised by the petitioner.

As for the first defect, the fact is undisputed that the one who signed the Waiver was none other than petitioner's President, Mr. Antonio Reyes-Cuerva. Considering that he is a responsible officer of the petitioner, a notarized Board Resolution is neither required nor necessary to give authority to Mr. Reyes-Cuerva to execute the Waiver.

This is clear in the second requisite laid down in ***Stanley Works Case***[42] which only requires a Board Resolution when the signatory of the Waiver is a representative other than a responsible officer of the Company.

To the Court *En Banc*'s mind, the rationale behind the aforementioned rule is due to the fact that the president of a corporation is presumed to have

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[40] SUBJECT: Waiver of the Defense of Prescription Under the Statute of Limitations, 29 June 2012.
[41] Emphasis supplied.
[42] G.R. No. 187589, 3 December 2014.

the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.[43]

As for the second defect, the petitioner is mistaken in its contention that the Revenue District Officer is not one of the authorized officers who can sign the Waiver for the BIR. As correctly ruled by the Court in Division, RDAO No. 05-01 is clear to the letter that the Revenue District Officer has the pre-requisite authority to sign the Waiver since the audit investigation of the petitioner is still pending at the Revenue District Office level.

Moreover, the Supreme Court in ***Stanley Works Case***[44] provided that the Revenue District Officer is the authorized officer to sign the Waiver on behalf of the BIR, to wit:

> "Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. . . . .
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> xxx xxx xxx
>
> **B. In the Regional Offices**
>
> 1. **The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount**."

As for the third defect, considering that the Waiver was executed on 11 February 2014, the applicable form of the Waiver to be followed is the one prescribed under RDAO No. 05-01 which is quoted as follows:

> "WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE
>
> I,______________ of ______________________request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its ________________________ tax liabilities for the year ________. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than _________.

[43] See Cebu Metro Pharmacy Inc., v. Euro-Med Laboratories, Philippines, Inc., G.R. No. 164757, 18 October 2010.

[44] G.R. No. 187589, 3 December 2014.

> The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.
>
> The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue."

Based on the form prescribe by RDAO No. 05-01, the amount of taxes due is not required to be indicated in the Waiver. Furthermore, the requisites provided in ***Stanley Works Case*** [45] do not include the requirement that the amount of the tax be specified in the Waiver.

However, the prescribed form of the waiver under RDAO No. 05-01 still requires the type of tax to be indicated in the waiver. Hence, this Court finds that since the Waiver did not indicate the type of taxes, the same is defective consistent with our ruling in ***Commissioner v. La Frutera, Inc.,***[46] to wit:

> "Applying the rules on waiver in this case, this Court affirms the finding of the Court in Division **that the waiver executed** by Mr. Edwin S. Ledesma **<u>is defective and is therefore without binding effect</u>**. As correctly found by the Court in Division:
>
> xxx xxx xxx
>
> **(d) The type of tax due was also not indicated in the waiver**;"

Aside from the defect previously mentioned, the Waiver is not duly notarized contrary to the third requisite laid down in the ***Stanley Works Case.***[47]

In this case, the proof of identity presented by petitioner's president to the Notary Public was his Community Tax Certificate which is not considered as competent evidence of identity under ***Section 12, Rule 11 of Administrative Matter No. 02-8-13-SC***. Hence, since the Waiver is not duly notarized, it is defective.

However, since the defects noted by the Court are attributable to the fault of both parties- the petitioner since it was petitioner's president who presented the invalid proof of identity to the notary public, and who filled

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[45] G.R. No. 187589, 3 December 2014.
[46] CTA EB Case No. 1011, 4 August 2014.
[47] *Ibid.*

out the Waiver without indicating the tax type; and the respondent since it allowed the petitioner to submit, and for duly receiving a defective Waiver- the parties in this case are *in pari delicto* or in equal fault, hence the exception in the ***Next Mobile Case***[48] applies to this case, to wit:

> **"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 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.**
>
> First, the parties in this case are **in pari delicto or "in equal fault." In pari delicto connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are in pari delicto, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.**
>
> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.
>
> Second, **the Court has repeatedly pronounced that parties must come to court with clean hands.** Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.
>
> Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.
>
> Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it

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

> 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 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."[49]

Likewise, petitioner is in estoppel as it allowed respondent to rely on the said Waiver and failed to raise any objection against its validity until the assessment reached the Court in Division, which is similar to the case of ***Commissioner of Internal Revenue v. Transitions Optical Philippines Inc.,***[50] to wit:

> "Estoppel similarly applies in this case.
>
> Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.
>
> **Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. <u>First, respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals.</u> In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers, when it stated:**
>
>> **This has reference to the Final Assessment Notice ("[F]AN") issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, five days after the waiver we issued which was valid until November 30, 2008 had prescribed."**[51]

The contention of the petitioner that the ***Next Mobile Case***[52] is not applicable to this case since the facts therein and of this case are different is without basis. The reason behind the pronouncement in the ***Next Mobile***

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[49] Emphasis supplied.
[50] G.R. No. 227544, 22 November 2017.
[51] Emphasis supplied.
[52] G.R. No. 212825, 7 December 2015.

Case[53] was not solely hinged on the execution of the five defective waivers, but on the factual circumstances that the parties to the execution of the waiver are *in pari delicto,* or at equal fault irrespective of the number of waiver/s accomplished or executed.[54]

Furthermore, the petitioner's witnesses have already admitted that its President had voluntarily signed and executed the Waiver; hence, the effects of the Waiver should be made binding to it. The petitioner is reminded that a Waiver is an agreement between the taxpayer and the BIR to extend the period to issue an assessment and collect the taxes due to a certain date. It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement.[55] Hence, both parties are bound by the agreement they entered into.

Lastly, the petitioner cannot assert that it did not benefit from the issuance of the Waiver. In the said extended period, the petitioner was given the opportunity to contest the assessment issued by the BIR against it and postpone the payment of its taxes, similar to the case of ***Next Mobile Case,***[56] to wit:

> "In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation**. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.**"[57]

Hence, based on the foregoing reasons, we find no reason to disturb the Decision of the Court in Division finding the Waiver to have validly extended the period to assess petitioner.

The FAN has become final and executory.

As correctly decided by the Court in Division, the FAN has already become final and executory for failure of the petitioner to file a valid Protest to the FAN. *L*

[53] *Ibid.*
[54] Active Multi-Marketing & Merchandising Services, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 1728 25 March 2019.
[55] Commissioner of Internal Revenue v. Standard Chartered Bank, G.R. No. 192173, 29 July 2015.
[56] G.R. No. 212825, 7 December 2015.
[57] Emphasis supplied.

Section 228 of the Tax Code[58] provides that an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

The implementing rules and regulation mentioned in Section 228 of the Tax Code is ***RR No. 12-99, as amended by RR No. 18-2013***,[59] which provides:

> "3.1.4 Disputed Assessment. - The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration - refers to a plea of re- evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation- refers to a plea of re- evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.**
>
> XXX XXX XXX
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> **If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment**

[58] SEC. 228. Protesting of Assessment. xxx Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

[59] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 28 November 2013.

> **<u>shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable</u>**."[60]

In this case, petitioner received the FAN on 18 June 2014. On 24 June 2014, it filed its Protest to the FAN dated 20 June 2014, hence, the Protest was filed well within the period provided under the Tax Code and RR No. 18-2013.

However, the Protest to the FAN submitted by the petitioner is not compliant with the form prescribed under RR No. 18-2013. In fact, the Protest to the FAN only consists of one page, which states:

> "We respectfully submit our Protest to the Preliminary Assessment Notice (PAN) dated 18 June 2014, a copy of which was received by Tektite Insurance Brokers, Inc. (TIBI) on June 18, 2014, in relation to the tax audit investigation of TIBI for taxable year ended December 31 2010. Relative thereto, may we request for re-investigation by the examiner so TIBI can substantiate its protest to the assessment."

Neither did the petitioner submit supporting documents for its request for reinvestigation within sixty (60) days from the date of the filing of the Protest to FAN, as mandated by RR No. 18-2013.

Hence, based on the foregoing facts, we affirm the findings of the Court in Division of the defects of the Protest to the FAN, specifically: (a) the Protest to the FAN erroneously referred to it as the PAN; (b) the petitioner failed to state the newly discovered or additional evidence that it intends to present in support of its request for reinvestigation; and (c) the Protest to the FAN failed to mention the applicable law, rules and regulations, or jurisprudence on which petitioner's protest is based.

Considering petitioner's Protest to the FAN failed to comply with the form and manner of protesting an assessment, the same is void and without force and effect. Consequently, since the Protest to the FAN is void, the FAN has already become final, and therefore its validity can no longer be questioned on appeal.

In this case, petitioner explains that its Protest to the FAN should be read in conjunction with its Reply to the NIC. It explains that its Reply to the NIC contains its arguments and supporting documents to disprove the assessment of the respondent. We find no merit to the contention of the petitioner.

First, the Protest to the FAN provides that it is asking for reinvestigation of the assessment issued against it. As discussed above, reinvestigation means that the petitioner is prepared to submit newly discovered or additional evidence apart from the documents it had previously submitted to the BIR.

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[60] Emphasis supplied.

Second, the Protest to the FAN did not refer to the Reply to the NIC. To the Court *En Banc*, the argument of the petitioner is merely an after-thought and is self-serving.

Third, petitioner should be faulted for relying on its Reply to the NIC as sufficient support to its Protest to the FAN. Its Reply to the NIC is different from the Protest to the FAN. During the stage of the FAN, it is presumed that all previous submissions made by the taxpayer have already been reviewed by the BIR, and have been found to be insufficient. Hence, the taxpayer is given another opportunity through its Protest to the FAN to convince the BIR to remove the assessment. Therefore, it is important for the petitioner's Protest to the FAN to follow the prescribed form under RR No. 18-2013, since it would be the basis of the BIR on whether to remove or retain the assessment. Hence, without indicating the factual and legal arguments in the Protest to FAN, it is as if the taxpayer had already conceded with the findings of the BIR, rendering the same final and executory.

Hence, the failure to file a valid protest within 30 days from the receipt of the FAN rendered the same final and executory, and, therefore, its validity or correctness may no longer be questioned on appeal.[61]

In view of the foregoing, this Court finds no reason to disturb the findings of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 3 November 2017, Amended Decision dated 12 April 2018, and Resolution dated 3 August 2018 are hereby **AFFIRMED** with **MODIFICATION** with regard to the computation of interest.

Petitioner is **ORDERED** to **PAY** the Bureau of Internal Revenue compromise penalty for failure to submit SLS, SLP, and SLI in the amount of ₱12,000.00, and basic deficiency income tax, surcharge, deficiency and delinquency interest, computed in accordance with the provision of Section 249 of the NIRC of 1997, as amended by RA No. 10963 ("TRAIN Law"), and as implemented by RR No. 21-2008:

Basic Tax Due	₱247,810.19
Surcharge (25%)	61,952.55
Subtotal	**₱309,762.74**
20% Deficiency Interest:	
From 16 April 2011 to 18 July 2014 (P247,810.19x 20% x 1190/365 days)	161,585.82
TOTAL AMOUNT DUE AS OF 18 JULY 2014	**₱471,348.56**

20% Deficiency Interest:

[61] CIR vs. Hambrecht & Quist Philippines, Inc., GR No. 169225, 17 November 2010.

From 19 July 2014 to 31 December 2017 (P247,810.19x 20% x 1262/365 days)	171,362.44
20% Delinquency Interest	
From 19 July 2014 to 31 December 2017 (P471,348.56x 20% x 1262/365 days)	325,940.76
TOTAL AMOUNT DUE AS OF 31 DECEMBER 2017	**₱968,651.76**

In addition, petitioner is ordered to pay the delinquency interest at the rate of twelve percent (12%) on the total unpaid amount as of 18 July 2014[62] in the amount of ₱471,348.56 as determined above, computed from 1 January 2018 until full payment thereof.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

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

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With due respect, I join the Concurring and Dissenting Opinion of J. CTM)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[62] Due date on the Assessment Notice (Exhibit "P-21-a, Division Docket p. 752).

(With due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

C E R T I F I C A T I O N

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1923
(*CTA Case No. 8903*)

Present:

DEL ROSARIO, *P.J.*,
CASTANEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 23 2020
8:30 a.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Tektite Insurance Brokers, Inc., thereby affirming the Court in Division's Decision dated November 3, 2017, Amended Decision dated April 12, 2018 and Resolution dated August 3, 2018.

I wish, however, to expound on the applicability of the requirement to indicate the specific type and amount of tax in the Waiver.

There is a view that the Waiver is void for it failed to specify the type and amount of tax due against petitioner. Indeed, I am not unaware of the form of the Waiver as prescribed in Revenue Memorandum Order (RMO) No. 20-90, *viz.*:

"WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE

_______________________________ in consideration of the approval by the Commissioner of Internal Revenue of my **request for <u>re-investigation and/or reconsideration</u> of my pending internal revenue case involving the assessment of the sums of** ______________________ **as** ______________________ **for the years** ____________________, hereby waive the running of the prescriptive period provided for **in Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code**, and consent to the assessment and collection of the taxes which may be found due after reinvestigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 203 and 223 and other relevant provisions of the National Internal Revenue Code, but not after ____________, 19___.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against the assessment. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment which may be made against him for the periods above mentioned; nor does he waive his right to use any of the legal remedies afforded by law to secure a credit or refund on such tax that may be assessed and paid for the same period pursuant to Sections 204 and 230 of the National Internal Revenue Code. The period of suspension agreed upon herein may be extended by subsequent agreement in writing made before the expiration of said period of extension.

xxx." *(Boldfacing supplied)*

A Waiver may be executed to: (i) extend the prescriptive period to <u>assess</u> a taxpayer for deficiency taxes; **<u>or</u>** (ii) extend the prescriptive period to <u>collect</u>, after the issuance of a FAN against a taxpayer. In the former case, the Waiver is executed prior to the issuance of the FAN, to give the taxpayer additional period to respondent to the informal assessment of the Bureau of Internal Revenue (BIR). In the latter case, the Waiver is usually executed after the taxpayer has filed a protest to the FAN by way of a request for reinvestigation, to extend the period to collect while giving the BIR sufficient time to review the documents submitted in support of the protest.

In the first instance, the taxpayer could not be expected or required to indicate the specific type and amount of tax in the Waiver. During the audit stage, there was yet no certainty as to the type and amount of tax that the taxpayer will eventually be assessed. Precisely, a Waiver is requested to give BIR ample time to finish its audit, formalize its assessment and issue the FAN. Thus, **Waivers executed at this stage of the assessment process indicate "all internal revenue taxes" as it is not possible for the taxpayer to state the specific type and amount of tax to be covered by the Waiver as said information are not yet available during that time.** In short, **how could the taxpayer be expected to specify the type and amount of tax when at the time of the execution of the Waiver the FAN has not been issued?**

In the second instance, the Waiver is executed by the taxpayer after it has filed a Protest to the FAN (with request for reinvestigation), to give sufficient time to respondent to review the documents that the taxpayer has submitted in support of the protest. Without the Waiver, the prescriptive period to collect the taxes assessed in the FAN may lapse. At this stage, the taxpayer can already indicate in the Waiver the type and amount of tax as the same has been determined and fixed in the FAN. Indeed, the afore-cited format of Waiver as provided in RMO No. 20-90, which requires the type and amount of tax, unambiguously refers to instances when the FAN has been issued and the taxpayer is already at the stage when he is requesting for a reinvestigation or reconsideration, as evinced by the following phrases:

> "xxx approval by the Commissioner of Internal Revenue of my request for **re-investigation and/or reconsideration of my pending internal revenue case** involving the assessment of the sums of ______________________ as ______________________ for the years ____________________, xxx." *(Boldfacing supplied)*

In the present case, when petitioner's President executed the Waiver, he indicated therein the phrase *"in connection with the investigation [of] [it's]* ***all internal revenue taxes liabilities*** *for the calendar year ending December 31, 2010..."* instead of specifying the type and amount of tax due that should be covered by the extended period. It was therefore clear in the Waiver that petitioner agreed to the extension of the period to assess it for all internal revenue tax liabilities for the year 2010.

At any rate, the format of the Waiver as provided under RMO No. 20-90, which necessitates the type and amount of tax, has been revised and abandoned. As stated in Revenue Memorandum Circular (RMC) No. 029-12, the format of the Waiver as prescribed in RMO No. 20-90 should not be used anymore as the same has been revised per Revenue Delegation Authority Order (RDAO) No. 05-01, *viz.*:

> "The provisions of RMO No. 20-90 should be strictly complied with in order for a Waiver to be valid. However, **the Waiver form prescribed in RMO No. 20-90 should no longer be used as the same has been revised per RDAO No. 05-01**.
>
> A copy of the Waiver form prescribed under RDAO No. 05-01 is hereto attached as Annex "A" for reference.
>
> xxx
>
> WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE
>
> I,______________of ___________________ request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its ____________________ tax liabilities for the year _______. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than ________."

As shown above, the format of the Waiver as prescribed under RDAO No. 05-01, which is the format applicable to petitioner, does not require the taxpayer to indicate the specific type and amount of tax.

In fine, I concur with the *ponencia*'s findings that the Waiver executed by petitioner is valid, and that it has extended the right of the government until October 31, 2014 to assess petitioner of the deficiency taxes for the year ending December 31, 2010.

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

-*versus*-

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UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 23 2020 8:32 a.m.

x- -x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.*:

I concur with the *ponencia* that the Letter of Authority (LOA) did not lose its validity due to the failure of the revenue officers to have the same revalidated within the required period.

However, I register my dissent to the finding that the Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (Waiver) was validly executed.

The requirements for a valid waiver have been summarized in *Commissioner of Internal Revenue v. Kudos Metal Corp.*,[1] 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

[1] G.R. No. 178087, May 5, 2010.

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 from, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and the 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. Commissioner of Internal Revenue*,[2] the Supreme Court explained the nature of a waiver and why it must be strictly construed in favor of the taxpayer:

> 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 that must therefore be carefully and strictly construed. The waiver of the

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[2] G.R. No. 162852, December 16, 2004.

> 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.

Applying the foregoing, a perusal of the waiver, executed on February 11, 2014, reveals the following infirmities:

1. The waiver was executed without the notarized written authority of Antonio Reyes-Cuerva to sign the waiver in behalf of Tektite Insurance Brokers, Inc.

2. The waiver did not contain the type and amount of tax.

3. The waiver was not duly notarized.

There is no showing that the waiver was duly supported with the notarized written authority of Antonio Reyes-Cuerva, or that respondent required the submission of such authority. The reason for requiring a notarized written authority was succinctly explained, as follows:

> The *raison d' etre* for the foregoing legal requirement is not that difficult to perceive – Section 23 of the Corporation Code of the Philippines explicitly confers upon the board of directors the competence to exercise the corporate powers of all corporations. Being a juridical entity, corporations cannot conduct its business, make any decisions, or act in any manner without action from its corresponding board xxx. *Ergo*, in the absence of authority from the board of directors,

> as in this case, no person, not even its officers, can validly bind a corporation.[3] (*Citations omitted*)

It is also respondent's responsibility to "make sure that the waiver is in the prescribed from, duly notarized, and executed by the taxpayer or his duly authorized representative" before signing and accepting the waiver. Unfortunately, respondent did not require the submission of a written notarized authority, neither did he question the notarization which was supported only with a community tax certificate, nor the failure to specify the type of tax involved. Despite all these, respondent still signed and accepted the waiver.

In *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*,[4] the Supreme Court emphasized the burden placed on the respondent:

> In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated,* the Court explained the nature of a waiver of assessment. The Court said:
>
>> In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90 as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

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[3] *Ayala Land International Sales, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9262, February 4, 2019.
[4] G.R. No. 213943, March 22, 2017.

> To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.
>
> Although we recognize that the power of taxation is deemed inherent in order to support the government, tax provisions are not all about raising revenue. Our legislature has provided safeguards and remedies beneficial to both the taxpayer, to protect against abuse; and the government, to promptly act for the availability and recovery of revenues. A statute of limitations on the assessment and collection of internal revenue taxes was adopted to serve a purpose that would benefit both the taxpayer and the government. (*Citations omitted*)

The BIR cannot shift the blame to the taxpayer for issuing defective waivers.[5] The Court has ruled that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

Based on the foregoing, the waiver is invalid and did not extend the period for assessing taxes. Considering that the assessment involves income tax for taxable year 2010, the following dates are relevant:

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[5] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, March 22, 2017, citing *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

Date Return Filed	Last Day to Assess	Date FAN was issued/received
April 15, 2011	April 15, 2014	June 18, 2014

Clearly, the assessment was issued beyond the prescriptive period and therefore void. It is settled that a void assessment bears no fruit.[6]

Thus, I vote that the Petition for Review be granted and the assessments for taxable year ending December 31, 2010 be cancelled and set aside.

CATHERINE T. MANAHAN
Associate Justice

[6] *Metro Star Superama, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.