REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1288** (CTA Case No. 8214)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **RINGPIS-LIBAN,** JJ.
JO ANNA LEE O. SANTOS, represented by JOSEFINO R. SANTOS, Respondent.	***Promulgated:*** OCT 03 2016 3:55 p.m.

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DECISION

UY, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on April 21, 2015, seeking the reversal of the Decision dated November 26, 2014 and Resolution dated March 2, 2015, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 8214, entitled, *"Jo Anna Lee O. Santos, represented by Josefino R. Santos, Petitioner, vs. Commissioner of Internal Revenue, represented by Revenue District Officer, Revenue District Office No. 25B, Sta. Maria, Bulacan, Respondent"*, the dispositive portions of which read as follows:

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[1] EB Docket, pp. 8 to 17.

Decision dated November 26, 2014:

"**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** Accordingly, the Letter-Decision dated November 24, 2010 rendered by the Revenue District Officer of RDO No. 25-B of Revenue Region No. 5 is **REVERSED** and the Notice of Tax Lien dated October 20, 2010 served at the Register of Deeds, Meycau[a]yan, Bulacan for Transfer Certificate of Title No. T-369883 is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."

Resolution dated March 2, 2015:

"**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.

Respondent Jo Anna Lee O. Santos is of legal age, single, and a resident of Bonga Menor, Bustos, Bulacan. She is represented by her father, Josefino R. Santos, also of legal age, married and a resident of Bonga Menor, Bustos, Bulacan, by virtue of a Special Power of Attorney dated November 16, 2010. She is the proprietor of Saint Paul Petron Station located at Donacion, Angat, Bulacan.

Pursuant to Letter of Authority No. 2007-00006162 dated December 12, 2007, BIR-Revenue Region No. 5 issued a Final Assessment Notice (FAN) on December 4, 2009 against respondent for alleged deficiency internal revenue tax liabilities for taxable year 2005, described as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	₱5,179,005.25	-	₱3,926,203.88	₱9,105,209.13
Value Added Tax	640,453.46	-	514,091.99	1,154,545.45

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Expanded Withholding Tax	3,000.00	₱ 750.00	2,424.60	6,174.60
			TOTAL AMOUNT DUE	₱10,265,929.18

Claiming that no administrative protest was made thereon by respondent, petitioner issued on March 10, 2010, a Preliminary Collection Letter (PCL), demanding payment of the aforementioned deficiency taxes, with an additional Compromise Penalty in the amount of ₱31,000.00, or in the total amount of ₱10,296,929.18.

On March 22, 2010, petitioner issued a Final Notice Before Seizure to respondent notifying the latter to make necessary settlement of her tax liabilities. Still having no response from the respondent, petitioner issued on May 14, 2010, a Warrant of Distraint and/or Levy.

On October 20, 2010, petitioner issued a Notice of Tax Lien notifying the Registry of Deeds, Meycauayan, Bulacan of the BIR's intention to establish a lien or encumbrance in favor of the government on respondent's property covered by Transfer of Certificate Title (TCT) No. T369883(M).

Thereafter, on November 17, 2010, respondent filed a Motion for Reconsideration of petitioner's Notice of Tax Lien, asserting the following as grounds for the cancellation of petitioner's tax lien on the subject property, namely: prescription, lack of factual basis for the assessment of deficiency taxes, non-receipt of previous notices, and that the levied property is not solely owned by the taxpayer.

On December 9, 2010, respondent received petitioner's Letter-Decision dated November 24, 2010, denying respondent's motion for reconsideration.

Aggrieved thereby, respondent filed a Petition for Review with the Court in Division on January 7, 2011, with a prayer for the issuance of a Temporary Restraining Order (TRO). The case was docketed as CTA Case No. 8214.

In the Resolution dated February 28, 2011, the Court in Division gave respondent an opportunity to be heard and to present evidence for the Suspension of the Implementation of the Warrant of Distraint and/or Levy dated May 14, 2010.

Accordingly, on March 14, 2011, respondent filed a Memorandum in Support of the Prayer for Temporary Restraining Order, while petitioner filed his Memorandum on March 25, 2011.

Meanwhile, on March 25, 2011, petitioner filed his Answer to the Petition for Review, raising, among others, the special and affirmative defense that in an effort to destroy the validity of the Final Assessment Notice in this case, respondent resorted to denial of her having signed a waiver of the defense of prescription under the Statute of Limitations; and that she would want the honorable Court of Tax Appeals to believe that she was not aware of any waiver.

Respondent, for her part, filed a Reply on April 11, 2011 alleging, among others, that with respect to the alleged Waiver of the Defense of Prescription dated September 10, 2008, under the Statute of Limitations of the National Internal Revenue Code, she denies the execution as well as her signature in said waiver as she allegedly never signed and read the same. Neither did she allegedly appear before the Notary Public who notarized the same, hence, she did not really know the contents of the said document.

In the Resolution dated April 12, 2011, the Court in Division granted respondent's prayer for the suspension of the implementation of the Warrant of Distraint and/or Levy on the condition that respondent files a surety bond equivalent to one and half (1½) times the amount sought to be collected.

Thereafter, on May 6, 2011, petitioner filed a Motion for Reconsideration praying that the April 12, 2011 Resolution be set aside and a new one be issued denying respondent's motion to suspend the implementation of the Warrant of Distraint and/or Levy.

On May 24, 2011, respondent filed a Comment on respondent's Motion for Reconsideration with Ex-Parte Motion to Set Case for Pre-Trial, praying that the case be set for Pre-Trial considering that the issues had been joined since petitioner already filed his Answer.

In the Resolution dated July 20, 2011, the Court in Division denied petitioner's motion for reconsideration and set the case for pre-trial on August 12, 2011 at 9:00 a.m. On August 5, 2011, petitioner filed his Pre-Trial Brief.

During the August 14, 2012 hearing, respondent's counsel failed to appear despite due notice and likewise failed to file a Pre-

Trial Brief. Thus, the Court in Division granted petitioner's motion for the dismissal of the present case for failure to prosecute.

Respondent then filed her Motion for Reconsideration on September 7, 2011, claiming that her counsel's failure to appear was due to the fact that counsel received the Notice of Resolution dated July 21, 2011 and the Resolution dated July 20, 2011, scheduling the pre-trial on August 12, 2011, only on August 16, 2011. Respondent further attached her Pre-Trial Brief in the said motion.

The Court in Division granted respondent's motion for reconsideration, in the Resolution dated September 7, 2011, solely in the interest of substantial justice so as to give petitioner a final opportunity to prosecute her case even though there was no indication from the record confirming respondent's alleged belated receipt of the notice of pre-trial conference. Accordingly, on October 25, 2011, the Court in Division issued a Notice of Pre-Trial Conference setting the case for Pre-Trial Conference on November 25, 2011 at 9:00 a.m.

On November 11, 2011, in compliance with the Notice of Pre-Trial Conference, petitioner filed her Pre-Trial Brief, while respondent posted his Amended Pre-Trial Brief on December 1, 2011. Then, on February 23, 2012, the Court in Division issued a Pre-Trial Order declaring the Pre-Trial Conference as terminated and ordered petitioner to proceed with her presentation of evidence.

On August 14, 2012 respondent filed her Formal Offer of Evidence, offering Exhibits "A" to "T-2", inclusive of sub-markings, to which petitioner filed his Comment/Objection (Re: Petitioner's Formal Offer of Evidence) on October 5, 2012. Acting thereon, the Court in Division issued the Resolution dated November 9, 2012, admitting most of the exhibits offered, save for Exhibits "D", "E", and "R" for being mere photocopies.

Thereafter, herein petitioner filed his Formal Offer of Documentary Evidence on July 12, 2013, offering Exhibits "1" to "11", inclusive of sub-markings, to which respondent filed her Comment on Respondent's Formal Offer on August 14, 2013. In the Resolution dated August 22, 2013, the Court in Division admitted all exhibits, save for Exhibits "9", "10", and "11", for failing to comply with the requirements under Section 3 of Administrative Matter (A.M.) No. 12-8-8-SC, otherwise known as the Judicial Affidavit Rule.

On September 10, 2013, petitioner filed a Motion for

Reconsideration, seeking the reconsideration of the August 22, 2013 Resolution. Petitioner begged the indulgence of the Court in Division, claiming that it was mere oversight on the part of petitioner's counsel. On the other hand, respondent filed her Comment on the Motion for Reconsideration on October 25, 2013, asserting strict interpretation of the said Rule by denying petitioner's motion.

In the Resolution dated November 13, 2013, the Court in Division ordered petitioner to submit replacement judicial affidavits within ten (10) days from notice thereof in accordance with Section 10 of A.M. No. 12-8-8-SC and held the determination of petitioner's motion for reconsideration in abeyance pending compliance therewith.

On November 28, 2013, respondent filed the said replacement judicial affidavits in compliance with the said Resolution. Consequently, in the Resolution dated December 17, 2013, the Court in Division approved the replacement judicial affidavits, thereby admitting the previously denied Exhibits "9", "10", and "11". In view of the said Resolution, the Court in Division ordered both parties to submit their respective Memorandum within thirty (30) days from notice thereof.

Accordingly, petitioner filed his Memorandum on February 6, 2014, while respondent submitted her Memorandum on February 26, 2014. Thereafter, the case was submitted for decision.

In the assailed Decision,[2] the Court in Division granted respondent's Petition for Review, and reversed the Letter-Decision dated November 24, 2010 rendered by RDO No. 25-B of Revenue Region No. 5, and cancelled and withdrew the Notice of Tax Lien dated October 20, 2010 which was served at the Register of Deeds, Meycauyan, Bulacan, for Transfer Certificate of Title No. T-369883.

Aggrieved, petitioner filed on December 18, 2014, a Motion for Reconsideration.[3] The same was denied by the Court in Division for lack of merit in the assailed Resolution dated March 2, 2015.[4]

On March 23, 2015, petitioner filed with the Court *En Banc,* a Motion for Extension of Time to File Petition for Review.[5] In the

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[2] EB Docket, pp. 18 to 38; Division Docket (CTA Case No. 8214), pp. 433 to 453.
[3] Division Docket (CTA Case No. 8214), pp. 454 to 457.
[4] EB Docket, pp. 39 to 42; Division Docket (CTA Case No. 8214), pp. 470 to 473.
[5] EB Docket, pp. 1 to 3.

Resolution dated March 26, 2015,[6] the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from March 25, 2015, or until April 9, 2015, within which to file his Petition for Review.

On April 21, 2015, petitioner filed a Motion for Leave of Court to Admit the Attached Petition for Review[7] in the instant case, and the same was granted in the Resolution dated May 27, 2015.[8]

On May 12, 2015, respondent filed its Comment on Petition for Review.[9]

In the Resolution dated July 8, 2015,[10] the Court *En Banc* resolved to give due course to the Petition for Review, and required the parties to submit their respective memorandum.

On August 20, 2015, petitioner filed a Motion for Extension of Time to File Petitioner's Memorandum,[11] which was granted by the Court *En Banc* in the Resolution dated August 25, 2015.[12] Pursuant thereto, a Memorandum for the Petitioner was filed on September 18, 2015.[13] Upon the other hand, respondent failed to file her Memorandum.[14]

The instant Petition for Review was submitted for decision on November 5, 2015.[15]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for resolution of the Court *En Banc*, to wit:

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[6] EB Docket, p. 4.
[7] EB Docket, pp. 5 to 7.
[8] EB Docket, pp. 51 to 52.
[9] EB Docket, pp. 44 to 49.
[10] EB Docket, pp. 55 to 56.
[11] EB Docket, pp. 57 to 59.
[12] EB Docket, p. 60.
[13] EB Docket, pp. 61 to 69.
[14] Per Records Verification dated October 6, 2015 issued by the Judicial Records Division of this Court, EB Docket, p. 70.
[15] EB Docket, pp. 72 to 73.

"A. Whether the rule on strict implementation of the Rules on Waiver of the Defense of Prescription should be made available in favor of taxpayers who have acted in bad faith and have benefited from the period pursuant to such waiver?

B. Whether respondent Jo Anna Lee O. Santos have acted in bad faith and have benefited from the period pursuant to a Waiver of the Defense of Prescription?"[16]

Petitioner's arguments:

Petitioner contends that the rule on strict implementation of the Rules on Waiver of the Defense of Prescription should not be made available in favor of taxpayers who have acted in bad faith and have benefited from the period pursuant to such waiver.

According to petitioner, there should be an exception to the rule on strict implementation of the said Rules, especially on instances when the taxpayer had obviously acted in bad faith and he had benefited from the period pursuant to such waiver; and such exception is necessary due to the fact that it has not been uncommon scenario where seemingly innocent taxpayer would unduly take advantage of the unintentional mistakes attributable to overwhelming loads of work committed and/or omitted by BIR authorized signatories.

Moreover, petitioner points out that respondent has acted in bad faith and have benefited from the period brought about by the execution of the Waiver of the Defense of Prescription.

Respondent's counter-arguments:

Respondent counters that the arguments raised by petitioner do not warrant a reversal of the questioned Decision for the following reasons, to wit: (1) the subject issue has already been discussed and resolved by the Court in Division, which found the waiver executed by petitioner as invalid for failing to comply with the fourth requirement, which states that soon after the waiver is signed by the taxpayer, the CIR or his duly authorized revenue officer to sign on her behalf, shall sign the same indicating that the BIR has accepted and agreed to the waiver and that the date of such acceptance by the BIR must be

[16] EB Docket, pp. 12 and 64.

indicated therein as well; (2) the said waiver, as correctly ruled by the Court in Division, was not valid for being defective and for failure to observe guidelines set forth under Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, which implement Sections 203 and 222 of the National Internal Revenue Code (NIRC); and (3) in case of failure, therefore, to comply with the provisions of RMO No. 20-90, the waiver shall be deemed defective, thus, it shall not extend the three-year prescriptive period of assessment.

Furthermore, respondent stresses that said waiver of defense of prescription has never been signed nor read by respondent; According to respondent, neither she appeared before the Notary Public who notarized the said waiver of defense of prescription, hence, she has no knowledge about the contents of the said document or its implication on her tax liability to the Government; and therefore, she could not be considered to have gained or benefited or acted in bad faith contrary to the allegations of petitioner, nor estopped in impugning the validity of said waiver.

THE COURT *EN BANC*'S RULING

We rule in favor of petitioner.

Before We address the merits of petitioner's arguments, We shall first resolve the issue as to whether or not respondent executed the subject waiver, considering that she is denying its execution.

After a careful and thorough consideration of the parties' allegations and arguments raised in their respective pleadings, as well as the evidence presented before the Court in Division, We are convinced that respondent executed the subject waiver.

Indications that respondent has indeed executed the subject waiver.

First, as correctly noted by the Court in Division in the assailed Decision, a close scrutiny of the documents presented by both parties in their respective Formal Offer of Evidence shows that petitioner's Special Power of Attorney,[17] respondent's letter dated June 13, 2009 addressed to the Chief Legal Division BIR,[18] respondent's letter dated

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[17] Exhibit "C", Division Docket (CTA Case No. 8214), p. 237.
[18] Exhibit "L", Division Docket (CTA Case No. 8214), p. 247.

November 8, 2010 addressed to the BIR Revenue District Office, Sta. Maria, Bulacan,[19] and the Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC dated September 10, 2008 and notarized on October 7, 2008,[20] all bear the same signature marking written above respondent's name, thereby establishing the fact that the waiver was indeed executed and duly signed by respondent.

Second, the said letter of respondent dated June 13, 2009,[21] which was sent after the date of execution of the subject waiver, betrays respondent's denial of her knowledge thereof. For easy reference, respondent wrote the following:

> "June 13, 2009
>
> The Chief
> Legal Division
> Bureau of Internal Revenue
> Revenue Region No. 5
> Valenzuela City
>
> Sir:
>
> This refers to the Subpoena Duces Tecum issued to JO ANNA LEE SANTOS to submit documents pertaining to the examination of 2005 Letter of Authority.
>
> I would like to request that the docket be returned back to Revenue District Office of Bulacan, for submission of books of accounts and other related accounting records and **for continuance of investigation** by Revenue Officer Annabelle Halili-Delicana.
>
> We are looking forward for your kind approval regarding this matter.
>
> God Bless and More Power!
>
> Respectfully Yours,
>
> *(Signed)*
> JO ANN LEE SANTOS
> Owner/Manager". *(Emphasis and underscoring supplied.)*

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[19] Exhibit "P", Division Docket (CTA Case No. 8214), p. 251.
[20] Exhibit "2", Division Docket (CTA Case No. 8214), p. 266.
[21] Exhibit "L," Docket (CTA Case No. 8214), p. 247.

Respondent's act of requesting the return of a tax docket to continue a tax investigation indicates her knowledge of the existence of the subject waiver. Logically, one will not ask for a continuance of tax investigation if he or she is indeed unaware that the period to assess has been extended pursuant to a waiver. In other words, if respondent was truly unaware of the agreement to extend the assessment period, she would not have requested for a continuance of the investigation by the petitioner, but instead already invoked the defense of prescription.

Lastly and most importantly, the Waiver that is the subject of this case is actually a notarized document. Relative thereto, it must be emphasized that a deed acknowledged before a notary public is a public document.[22] As such, it has evidentiary weight with respect to its due execution, and therefore, presumed to be valid and duly executed.[23] Thus, one who denies the due execution of a notarized document, has the burden of proving that contrary to the recital in the Acknowledgment, she has never appeared before the notary public and acknowledged the deed to be her voluntary act.[24]

In this case, apart from the bare denials of her duly authorized representative, respondent never testified in court, nor did she present any evidence to overturn the presumption that the subject Waiver, having been notarized, was valid and duly executed.

Thus, the Court *En Banc* finds that the subject Waiver of the Defense of Prescription was, in fact, duly executed by respondent.

The exception to the rule.

The rule is well-settled that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO No. 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes.[25]

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[22] Section 19(b), Rule 132, Rules of Court; and *People of the Philippines vs. Bomping, et al.*, G.R. No. L-24187, March 15, 1926.

[23] Section 23, Rule 132, Rules of Court; and *Spouses Cirelos vs. Spouses Hernandez and Zafe,* G.R. No. 146523, June 15, 2006, citing *Veloso vs. Court of Appeals,* 329 Phil. 398, 407 (1996).

[24] *Spouses Cirelos vs. Spouses Hernandez and Zafe,* supra, citing *Aznar Brothers Realty Co. vs. Court of Appeals,* 384 Phil. 95, 112 (2000).

[25] Refer to *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008; and *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

However, this rule is not absolute. In the recent case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[26] *(or Next Mobile case)* the Supreme Court established the exception to the said rule, to wit:

> "xxx. In the instant case, the CTA found the Waivers because of the Waivers because of the following flaws: (1) they were executed without a notarized board authority; **(2) the dates of acceptance by the BIR were not indicated therein; and (3) the fact of receipt by respondent of its copy of the Second Waiver was not indicated on the face of the original Second Waiver.**
>
> To be sure, both parties in this case are at fault.
>
> xxx xxx xxx
>
> 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.
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> On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent

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

to even comply with its most basic requirements.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. xxx. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 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 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."

We see no reason why the foregoing case cannot be applied to the instant case. Parenthetically, it must be noted that two (2) of the flaws found in the aforequoted case are present in the subject waiver, to wit: (1) the date of acceptance by the BIR was not indicated therein; and (2) the fact of receipt by respondent of her copy of the said waiver was not indicated on the face of the original waiver.[27] Thus, the subject waiver is indeed defective.

Firstly, in this case, both the petitioner and respondent are *in pari delicto*. Respondent executed the subject Waiver in consideration of the opportunity to gather and submit documents to substantiate her case before the BIR, and correspondingly, was able to postpone the payment of the subject taxes assessed against her. In fact, as already pointed out, respondent herself recognized the validity of the extended period of assessment stated in the subject Waiver when she requested the Chief of the BIR's Legal Division for the return of tax docket for the continuance of the tax investigation, as evidenced by the above-quoted letter dated June 13, 2009.[28] Yet, after enjoying the benefits given by the subject waiver, respondent denies the same, when the effects thereof were already to her disadvantage. Simply put, respondent's act of assailing the subject waiver after benefiting therefrom and allowing petitioner to rely thereto is an act of bad faith.

On the other hand, the BIR likewise failed to perform its duty to ensure compliance with its own issuances. The BIR should have strictly conformed to the requirements under RMO No. 20-90 and RDAO 05-01, in order to render the subject waiver as valid. In this case, however, as already observed, there was a failure to indicate the date of acceptance by the petitioner, and the fact of receipt by respondent of her copy of the said waiver on the face of the original waiver, as are required by the said issuances.

Hence, the Court *En Banc* finds that both parties are in *pari delicto* in their failure to strictly comply with legal requirements in the

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[27] Exhibit "2", BIR Records, p. 69.
[28] Exhibit "L," Docket (CTA Case No. 8214), p. 247.

execution of the subject waiver as specified under RMO No. 20-90 and RDAO No. 01-05.

Secondly, respondent did not come to court with clean hands. Thus, she should not be allowed to benefit from the invoked flaws of her own waiver to avoid her responsibility to pay subject deficiency taxes.

Lastly, respondent is estopped from questioning the subject waiver. This is so because the said waiver allowed petitioner to rely on them as respondent did not raise any objection/s against it until the BIR began the process of collection of taxes and penalties against respondent.

Consequently, and in light of the Decision of the Supreme Court in the *Next Mobile* case, the Court *En Banc* hereby finds that the subject waiver had validly extended the right of the government to assess respondent of her deficiency tax liabilities for taxable year 2005.

Considering however that the Court in Division did not proceed to determine respondent's deficiency tax liabilities for taxable year 2005, the Court *En Banc* must remand the case to the Court *a quo* for further proceedings.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is hereby **GRANTED.** The Decision dated November 26, 2014 and the Resolution dated March 2, 2015 promulgated by the Third Division of this Court are **SET ASIDE**.

Accordingly, CTA Case No. 8214 is **REMANDED** to the Court in Division for a complete determination of respondent's deficiency tax liabilities for taxable year 2005.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice