Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **9 August 2023**, *which reads as follows:*

"**G.R. No. 244464 (*Commissioner of Internal Revenue, Petitioner v. Coral Bay Nickel Corporation, Respondent*).** — Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45, Rules of Court, assailing the 14 August 2018 Decision[2] and the 6 February 2019 Resolution[3] of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 1652 (CTA Case No. 8756). The CTA EB denied the Petition for Review[4] filed on 2 June 2017 and the subsequent Motion for Reconsideration[5] filed on 5 September 2018 of petitioner Commissioner of Internal Revenue (CIR), and affirmed the 13 January 2017 Decision[6] and 26 April 2017 Resolution,[7] both rendered by the CTA Third Division (Court in Division).

Respondent Coral Bay Nickel Corporation (Coral Bay) is a domestic corporation engaged in "owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market or otherwise treating metals, minerals and mined products to be used in production of mixed sulfide of nickel and cobalt, and any and all

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1 *Rollo*, pp. 51–77.

2 Id. at 78–102. Penned by Associate Justice Erlinda P. Uy, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Associate Justice Lovell R. Bautista took no part.

3 Id. at 103–108. Penned by Associate Justice Erlinda P. Uy, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan.

4 CTA records, pp. 7–24.

5 Id. at 103–116.

6 Id. at 25–42. Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred in by Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban.

7 Id. at 43–47. Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred in by Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban.

ingredients, products, and by-products of any thereof."[8] By virtue of the Letter of Authority No. 00007327, Revenue Officer Jesus DS. Reyes conducted the audit for the year 2007. He testified that Coral Bay executed a Waiver of the Defense of Prescription[9] (Waiver) on 20 April 2010 to extend the period to assess until 31 December 2010. The CIR accepted the Waiver on 30 April 2010.[10]

Then, Coral Bay received a Notice of Informal Conference dated 27 October 2010 from the CIR and filed a Reply thereto.[11] On 12 November 2010, Coral Bay executed another Waiver[12] to extend the period to assess until 30 June 2011.[13]

On 16 February 2011, Coral Bay received from the CIR a Preliminary Assessment Notice (PAN) with attached Details of Discrepancy for its alleged deficiency value-added tax (VAT), fringe benefits tax (FBT), withholding tax (WT) and excise tax (ET). On 3 March 2011, Coral Bay filed a Reply to the PAN.[14] In the meantime, Coral Bay executed three more Waivers[15] extending the period to assess until 31 December 2011, 31 October 2012 and 30 June 2013, respectively.[16]

On 29 May 2013, Coral Bay received a Formal Letter of Demand from the CIR with attached Details of Discrepancy and Assessment Notices for alleged deficiency tax liabilities for taxable year ending 31 December 2007:[17]

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

On 14 June 2013, Coral Bay paid the assessed amounts for EWT and FBT,[18] but protested the assessment for the alleged deficiency FWT amounting to PhP 242,665,223.95 on 26 June 2013.[19]

On 10 December 2013, Coral Bay received the Final Decision on Disputed Assessment (FDDA) dated 6 December 2013, with the Details of Discrepancy for taxable year 2007, assessing Coral Bay with deficiency FWT in the amount of PhP 254,721,476.95, inclusive of interest and penalties.[20]

Aggrieved, Coral Bay filed a Petition for Review with the Court in

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8 *Rollo*, p. 80.
9 See BIR records, p. 325.
10 CTA records, p. 29.
11 *Rollo*, p. 80.
12 See BIR records, p. 337.
13 CTA records, p. 29.
14 *Rollo*, p. 80.
15 See BIR records, pp. 448, 472, 534.
16 CTA records, p. 29.
17 *Rollo*, p. 80.
18 Id.
19 Id.
20 Id. at 81.

Division, docketed as CTA Case No. 8756.[21]

On 13 January 2017, the Court in Division cancelled and set aside the FDDA dated 6 December 2013 for deficiency FWT. The dispositive portion of its ruling reads:

> **WHEREFORE**, the Petition for Review dated 8 January 2014 filed by Coral Bay Nickel Corporation is hereby GRANTED. Accordingly, the FDDA dated December 6, 2013 issued by respondent Commissioner of Internal Revenue against petitioner for taxable year 2007 for deficiency FWT in the amount of P254,721,476.95, inclusive of interest and compromise penalty, is hereby **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED**.[22]

The CIR moved for reconsideration, but the same was denied by the Court in Division in its Resolution dated 26 April 2017.[23]

On 2 June 2017, the CIR filed a Petition for Review with the CTA EB, docketed as CTA EB No. 1652.[24]

In its 14 August 2018 Decision, the CTA EB denied the Petition for Review for lack of merit and affirmed the 13 January 2017 Decision and 26 April 2017 Resolution of the Court in Division.[25]

Subsequently, on 5 September 2018, the CIR filed a Motion for Reconsideration, which the CTA EB denied in its 6 February 2019 Resolution.[26]

Hence, this petition, with the CIR raising the following issues:

1. Whether the CTA EB erred when it ruled that Coral Bay is not estopped from questioning the validity of the Waivers;
2. Whether the CTA EB erred when it ruled that the period of limitation under Section 203 is applicable to withholding taxes; and
3. Whether the CTA EB erred when it affirmed the Court in Division which cancelled the FDDA dated 6 December 2013 for deficiency FWT for taxable year 2007.

In its Comment[27] dated 2 September 2019, Coral Bay submits that the CIR's application of *Commissioner of Internal Revenue v. Next Mobile, Inc.*[28] in the instant case is misplaced pointing out that the factual circumstances of

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21 Id.
22 CTA records, p. 41.
23 Id. at 47.
24 *Rollo*, p. 83.
25 Id. at 101.
26 Id. at 103–107.
27 Id. at 112–146.
28 774 Phil. 428 (2015).

Next Mobile are different from the case under consideration.[29] Coral Bay adds that the final withholding tax is covered within the definition of internal revenue tax in the Tax Code.[30]

In its Reply dated 6 December 2019, the CIR maintains its position that it correctly assessed Coral Bay for deficiency FWT for taxable year 2007.[31]

The Court finds no reason to reverse the ruling of the CTA EB.

At the outset, it must be stressed that the Court accords great respect to the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created to review tax cases. The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, has accordingly developed an exclusive expertise on the resolution of the cases unless there has been an abuse or improvident exercise of authority. Absent any clear and convincing proof that the findings of the CTA are not supported by substantial evidence or that there is a showing that it committed a gross error or abuse, the Court must presume that the CTA rendered a decision which is valid in every respect.[32]

On the first issue of validity of waivers, Secs. 203 and 222, Republic Act No. 8424, or the National Internal Revenue Code of 1997 (NIRC),[33] provide:

> SECTION 203. *Period of Limitation upon Assessment and Collection.*— **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
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> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
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> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may

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29 *Rollo*, p. 126.
30 Id. at 133.
31 Id. at 157.
32 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, 24 August 2020.
33 Entitled, "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES." Approved on 11 December 1997.

> be extended by subsequent written agreement made before the expiration of the period previously agreed upon. (Emphasis supplied)
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Thus, the original three-year prescriptive period may be extended through the execution of a waiver on the statute of limitations before the three-year period expires.

The CIR cites *Next Mobile* arguing that Coral Bay is estopped from questioning the validity of the Waivers it voluntarily executed. The CIR submits that (1) Coral Bay never questioned the validity of the Waivers during the conduct of the audit; (2) the second Waiver was executed during the existence of the first Waiver; and (3) that Coral Bay only questioned the validity of the Waivers when the audit investigation yielded unfavorable results.[34]

Reliance of the CIR in *Next Mobile* is misplaced. In that case, the Court upheld the validity of the waivers despite their deficiencies which were (1) execution without notarized board authority; (2) failure to indicate the dates of acceptance by the Bureau of Internal Revenue (BIR); and (3) failure to indicate receipt on the face of the waiver. The Court applied the doctrine of estoppel on the ground that both the taxpayer and the BIR were *in pari delicto* or "in equal fault."

In *Next Mobile*, the deficiencies of the waivers were considered as formal deficiencies and were contributed by both parties, which is not the situation in the instant case. In question here is the date of effectivity of the Waivers.

In *Republic v. First Gas Power Corp.*,[35] the Court reiterates the requirements for the proper execution of waiver:

> In the case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*, (*Kudos Metal* case) the Court laid down the requirements for the proper execution of waiver, to wit:
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> > Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. [Revenue Memorandum Order (RMO)] 20-90 issued on April 4, 1990 and [Revenue Delegation Authority Order (RDAO)] 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> > 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after

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34 *Rollo*, p. 60.
35 G.R. No. 214933, 15 February 2022.

> _____ 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.
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> 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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> 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.
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> **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.**
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> 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. (Emphasis supplied)

RMO No. 014-16, which revised RMO No. 20-90 and RDAO No. 05-01, likewise clarified that one of the requisites for a valid waiver is that the "waiver shall be executed and duly accepted prior to the expiration of the period to assess or to collect."[36]

As found by the CTA EB, the first Waiver became effective only on 30 April 2010,[37] which was already beyond the three-year period to assess pursuant to Sec. 203, NIRC, *viz.*:[38]

> In the instant case, Coral Bay was assessed with deficiency FWT for calendar year 2007. Relevantly, the dates of filing of the pertinent returns

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36 Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended, 4 April 2016.

37 See BIR records, p. 325.

38 *Rollo*, p. 88.

for the months of January, February and March 2007 and the corresponding dates within which respondent [CIR] should assess respondent for deficiency FWT for the period provided under Section 203, are the following:

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

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

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In this case, however, the *Waiver of the Defense of Prescription Under the Statute of Limitations Under the National Internal Revenue Code* (hereinafter referred to as "first waiver"), **became effective only on April 30, 2010**, when the said waiver was accepted by the BIR.[39] (Emphasis in the original)

Considering that the CIR accepted the first Waiver after the expiration of the prescriptive period, it failed to validly extend its right to assess for the deficiency FWT for the months of January, February and March 2007. Thus, the assessments for the said months as contained in the FDDA dated 6 February 2013 were beyond the three-year statute of limitations. In *CIR v. B.F. Goodrich Phils.*,[40] the Court held that exceptions to the law on prescription should perforce be strictly construed.

Anent the second issue of the application of the period of limitation on withholding taxes under Sec. 203, NIRC, the CIR claims that the assessment on the alleged FWT represents a penalty imposed on Coral Bay as a withholding agent for its failure to withhold taxes. Such imposition of penalty is not covered by the three-year prescriptive period provided in the NIRC as the amount being collected from the withholding agent is not the tax itself.[41] The CIR cites *National Development Company v. CIR*[42] as basis that withholding taxes are only penalties imposed on the withholding agent.[43]

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39 Id.
40 363 Phil. 169, 178 (1999).
41 *Rollo*, p. 60.
42 235 Phil. 477 (1987).
43 *Rollo*, pp. 62–63.

This is incorrect. In the recent case of *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*,[44] the Court refuted a similar argument and explained its previous ruling in *National Development Company v. Commissioner of Internal Revenue:*

> A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.
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> The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties.
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> Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

Further, in *La Flor Dela Isabela,* the Court categorically declared that withholding taxes are internal revenue taxes covered by Sec. 203, NIRC. Hence, the three-year prescriptive period is applicable to withholding taxes, including the final withholding tax which is being collected from Coral Bay.

As to the third issue, the CIR insists that the CTA EB erred when it cancelled the assessment for deficiency FWT.[45] The CIR invokes that the tax treaty relief provided under the Philippines-Japan Tax Treaty[46] is not applicable because Coral Bay failed to comply with the requirements of RMO No. 01-2000[47] in order to be exempt from taxes pursuant to a tax treaty. Coral Bay cannot automatically exempt itself from the payment of withholding taxes without observing the provisions under RMO No. 01-2000. With this,

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44 G.R. No. 211289, 14 January 2019.

45 *Rollo*, p. 63.

46 Entitled, "THE CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME." Signed in Tokyo, Japan on 13 February 1980 and entered into force on 20 July 1980.

47 Prescribes the procedures for processing of tax treaty relief applications. Issued on 4 January 2000.

the CIR maintains that it correctly assessed Coral Bay for deficiency FWT for taxable year 2007.[48]

In *Air Canada v. Commissioner of Internal Revenue*,[49] the Court echoed its pronouncement in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, which was also relied upon by the CTA EB in its Decision, that prior application for tax relief from the BIR is not mandatory and merely operates to confirm the entitlement of the taxpayer to the reliefs provided under tax treaties. Thus:

> In Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue, this court stressed the binding effects of tax treaties. It dealt with the issue of "whether the failure to strictly comply with [Revenue Memorandum Order] RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty." Upholding the tax treaty over the administrative issuance, this court reasoned thus:
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> *"A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken." Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto.* ***The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.***
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> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, **the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief**.
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> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000.** Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system

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48 *Rollo*, p. 64.
49 776 Phil. 119, 140–142 (2016).

> management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief. (Emphasis supplied)

Clearly, the CTA EB correctly ruled that "the fact that respondent failed to file a prior application for tax treaty relief for its income payments does not *ipso facto* preclude it from enjoying the preferential tax rate of 10% under Articles 10, 11[,] and 12 of the Philippines-Japan Tax Treaty."[50]

Further, as the CTA EB pointed out, the Court in Division held that Coral Bay successfully proved its compliance and entitlement to the 10% preferential tax rate under the Philippines-Japan Tax Treaty.[51]

In fine, it appearing that the findings and conclusions of the CTA EB are supported by substantial evidence and are untainted by gross error or any abuse of authority, the CTA EB committed no reversible error in its assailed Decision and Resolution to warrant this Court's consideration.

WHEREFORE, in view of the foregoing, the instant petition is **DENIED**. The 14 August 2018 Decision and the 6 February 2019 Resolution of the Court of Tax Appeals *En Banc* in EB No. 1652 (CTA Case No. 8756) are **AFFIRMED**.

SO ORDERED."

By authority of the Court:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court and
Acting Division Clerk of Court

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50 *Rollo*, p. 97.
51 Id.