Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner	**G.R. Nos. 249239 and 250286**
- versus –	
TELSTAR MANUFACTURING CORPORATION, Respondent.	
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TELSTAR MANUFACTURING CORPORATION, Petitioner,	**G.R. Nos. 249241–42**
- versus -	Present: CAGUIOA, *J.*, *Chairperson,* INTING, GAERLAN,* DIMAAMPAO, and SINGH,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 10 2025

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* On official business but left his concurring vote.
** On leave.

DECISION

DIMAAMPAO, *J.*:

These consolidated[1] petitions for review on *certiorari*[2] under Rule 45 of the Rules of Court seek to set aside the Decision[3] and the Resolution[4] of the Court of Tax Appeals (CTA) sitting *en banc* in CTA EB Nos. 1797 and 1879. In the impugned Decision, the CTA *En Banc* affirmed with modifications the Decision[5] and the Resolution[6] of the CTA Second Division, which ordered Telstar Manufacturing Corporation (Telstar) to pay deficiency income tax, value-added tax, and expanded withholding tax for the year 2009. The challenged Resolution, on the other hand, denied the Motion for Partial Reconsideration[7] filed by Telstar.

The salient facts follow.

On May 14, 2010, the Bureau of Internal Revenue (BIR) Large Taxpayers Service Regular served upon Telstar Letter of Authority No. 116-2010-00000096[8] in line with Revenue Memorandum Order No. 36-2010[9] on the conduct of special investigation and enforcement activities of interrelated companies, conglomerates, their affiliates and subsidiaries for taxable year 2009.

Consequently, Telstar submitted its documents, books and records to the BIR.[10] Nevertheless, Divina A. Puyo (Puyo), Telstar's President and General Manager, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[11] (*first waiver*)

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1 *Rollo* (G.R. Nos. 249239 & 250286), pp. 124–125.

2 *Id.* at 48–65; *rollo* (G.R. No. 249241–42), pp. 15–82.

3 *Rollo* (G.R. Nos. 249239 & 250286), pp. 7–34, 66–93; *rollo* (G.R. Nos. 249241–42), pp. 83–109. The April 15, 2019 Decision was penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Presiding Justice Roman G. Del Rosario rendered a Concurring and Dissenting Opinion, *rollo* (G.R. Nos. 249241–42), pp. 110–113.

4 *Rollo* (G.R. Nos. 249239 & 250286), pp. 36–42, 95–101; *rollo* (G.R. Nos. 249241–42), pp. 114–120. The September 10, 2019 Resolution was penned by Associate Justice Cielito N. Mindaro-Grulla with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro. Associate Justice Erlinda P. Uy was on leave. Presiding Justice Roman G. Del Rosario reiterated his concurring and dissenting on the April 15, 2019 Decision, *rollo* (G.R. Nos. 249239 & 250286), pp. 43–44; 102–103; *rollo* (G.R. Nos. 249241–42), pp. 121–122.

5 *Rollo* (G.R. Nos. 249241–42), pp. 723–781. The August 18, 2017 Decision of the CTA Second Division in CTA Case No. 8900 was penned by Associate Justice Juanito C. Castañeda, Jr. with the concurrence of Associate Justices Caesar A. Casanova and Catherine T. Manahan.

6 *Id.* at 842–861. The February 8, 2018 Resolution of the CTA Second Division in CTA Case No. 8900 was penned by Associate Justice Juanito C. Castañeda, Jr. with the concurrence of Associate Justices Caesar A. Casanova and Catherine T. Manahan.

7 *Id.* at 1019–1045.

8 *Id.* at 322.

9 Conglomerate Audit Program for Taxable Year 2009.

10 *Rollo* (G.R. Nos. 249241–42), pp. 323–329.

11 *Id.* at 330.

requesting more time to submit the required documents. Subsequently, Puyo signed a *second waiver* extending the period of assessment until December 31, 2013. Both waivers were accepted by the Commissioner of Internal Revenue (CIR) through OIC-Assistant Commissioner Alfredo V. Masajon of the Large Taxpayers Service.[12]

On June 18, 2013, Telstar received from the BIR a Preliminary Assessment Notice[13] for deficiency income tax, improperly accumulated earnings tax, value-added tax, expanded withholding tax, and documentary stamp tax for the year 2009. In response, Telstar, through Puyo, explained that the findings of the BIR revenue officers were due to time recognition differences, remuneration to Mercury Group of Companies, Inc., and difference in costing method used, among others.[14]

As it happened, CIR issued on October 16, 2013 a Formal Letter of Demand[15] assessing Telstar for the following deficiency taxes:

Income Tax	[PHP] 255,371,069.77
Improperly Accumulated Earnings Tax	[PHP] 341,327.08
Value-Added Tax	[PHP] 114,939,336.31
Expanded Withholding Tax	[PHP] 2,861,287.15
Documentary Stamp Tax	[PHP] 420,276.22

Annexed to the Formal Letter of Demand was a document detailing the discrepancies.[16]

Reiterating its earlier explanations, Telstar filed a protest on the assessment.[17] Partly convinced, CIR issued a Final Decision on Disputed Assessment[18] cancelling in full the assessments on improperly accumulated earnings tax and documentary stamp tax, but partially affirming the final assessments on income tax, value-added tax, and expanded withholding tax. Attached to the Final Decision on Disputed Assessment was the document entitled "Details of Discrepancy."[19]

Disgruntled, Telstar lodged a Petition for Review[20] before the CTA, mainly insisting that the waivers executed by Puyo were not valid. The case, docketed as CTA Case No. 8900, was raffled off to the CTA Second Division.

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12 *Id.* at 331.
13 *Id.* at 345–355.
14 *Id.* at 356–359, Letter dated July 3, 2013.
15 *Id.* at 362–364.
16 *Id.* at 365–372.
17 *Id.* at 373–376.
18 *Id.* at 377–378.
19 *Id.* at 379–385.
20 *Id.* at 386–408.

The CTA Second Division Ruling

On August 18, 2017, the CTA Second Division rendered the August 18, 2017 Decision[21] pronouncing that both Telstar and the CIR were estopped from questioning the validity of the waivers since they were *in pari delicto*. Likewise, Telstar was adjudged liable for deficiency income tax, value-added tax, and expanded withholding tax, thusly—

> **WHEREFORE**, the present Petition for Review is **DENIED**. [Telstar] is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of [PHP] 18,061,826.06, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, detailed as follows:
>
> | **Tax Type** | **Basic Deficiency** | **Surcharge** | **Total** |
> |---|---|---|---|
> | Income tax | [PHP]2,891,062.57 | [PHP] 722,765.64 | [PHP] 3,613,828.21 |
> | Value-added tax | 11,525,666.27 | 2,881,416.57 | 14,407,082.84 |
> | WT-Expanded | 32,732.01 | 8,183.00 | 40,915.01 |
> | TOTAL | **[PHP] 14,449,460.85** | **[PHP] 3,612,365.21** | **[PHP] 18,061,826.06** |
>
> In addition, [Telstar] is **ORDERED** to pay:
>
> (a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of [PHP] 18,061,826.06, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of [PHP] 14,449,460.85 and 25% surcharge of [PHP] 3,612,365.21, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**[22] (Emphasis in the original)

Unflustered, Telstar moved for a partial reconsideration[23] of the above disposition, which the CTA Second Division partly granted in its February 8, 2018 Resolution.[24] While the validity of the waivers was upheld by the CTA Second Division, Telstar's deficiency income tax, deficiency value-

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21 *Id.* at 723–781.
22 *Id.* at 780.
23 *Id.* at 782–815.
24 *Id.* at 842–860.

added tax, and deficiency expanded withholding tax were reduced for a total sum of PHP 5,964,053.62, distributed as follows: a) PHP 2,804,113.22 deficiency income tax; b) PHP 3,127,208.39 deficiency value-added tax; and c) PHP 32,732.01 deficiency expanded withholding tax.[25]

CIR moved for the reconsideration of the February 8, 2018 Resolution, which the CTA Second Division denied.[26]

Both parties sought recourse before the CTA *En Banc*, with Telstar's petition docketed as CTA EB No. 1797[27] and that of the CIR as CTA EB No. 1879.[28] The cases were eventually consolidated considering that they appealed from the same issuances of the CTA Second Division.[29]

The CTA *En Banc* Ruling

In the impugned Decision, the two petitions separately lodged by Telstar and CIR were denied. In effect, the findings of the CTA Second Division were affirmed. However, the computation of deficiency interest and delinquency interest was modified in view of the effectivity of Republic Act No. 10963[30] and the issuance of Revenue Regulations No. 21-2018.[31] The CTA *En Banc* disposed of the petitions in this wise:

> **WHEREFORE**, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit.
>
> Accordingly, the Resolution dated February 8, 2018 is hereby **AFFIRMED with MODIFICATIONS** in the computation of deficiency interest and delinquency interest in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulations No. 21-2018 and shall read as follows:
>
> > "**WHEREFORE**, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision of this Court dated August 18, 2017 is **MODIFIED** as follows:
> >
> > > "**WHEREFORE**, the present Petition for Review is **PARTLY GRANTED**. [Telstar] is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of [PHP]

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25 *Id.* at 854.
26 *Rollo* (G.R. Nos. 249239 & 250286), pp. 19, 78.
27 *Rollo* (G.R. Nos. 249241–42), pp. 862–908.
28 *Id.* at 924–935.
29 *Id.* at 936.
30 Otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law (2017).
31 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN Law).

25,348,408.53, inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:

	Income Tax	Value-Added Tax	Expanded Withholding Tax	Total Due
Basic Tax	2,804,113.22	3,127,208.39	32,732.01	5,964,053.62
25% surcharge	701,028.31	781,802.10	8,183.00	1,491,013.41
20% Deficiency Interest				
April 16, 2010 to August 29, 2014 (1596 days) (basic tax x .20 x 4.372 years)	2451916.6			2,451,916.60
January 26, 2010 to August 29, 2014 (1676 days) (basic tax x .20 x 4.5917 years)		2871840.553		2,871,840.55
January 16, 2010 to August 29, 2014 (1687 days) (basic tax x .20 x 4.6219 years)			30256.8154	30,256.82
Total Amount due as of August 29, 2014	**5,957,058.12**	**6,780,851.04**	**71,171.83**	**12,809,080.99**
Add:				
20% Deficiency Interest				
August 30, 2014 to December 31, 2017 (1219 days) (basic tax x .20 x 3.3397 years)	1,872,979.384	2,088,787.572	21,863.01876	3,983,629.975
20% Delinquency Interest				
August 30, 2014 to December 31, 2017 (1219 days) (total amount due as of August 29, 2014 x .20 x 3.3397 years)	3,978,957.404	4,529,201.644	47,538.51073	8,555,697.558
Total Amount due as of December 31, 2017	**11,808,994.91**	**13,398,840.26**	**140,573.36**	**25,348,408.53**

In addition, [Telstar] is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of August 29, 2014 amounting to [PHP] 5,957,058.12 for Income Tax, [PHP] 6,780,851.04 for VAT, and [PHP] 71,171.83 for Expanded Withholding Tax, or in the aggregate amount of [PHP] 12,809,080.99, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

Petitioner's *Manifestation with Motion for Correction of Dispositive Portion of Decision* is **NOTED**."

SO ORDERED.[32] (Emphasis in the original)

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[32] *Rollo* (G.R. Nos. 249241–42), pp. 107–108.

Both parties' bids for partial reconsideration of the above disposition were denied by the CTA *En Banc* in the assailed Resolution.[33]

Issues

Resolute on their incongruent positions, Telstar and CIR are now before this Court, each ascribing errors upon the CTA *En Banc* and the CTA Second Division.

In *G.R. Nos. 249241–42*, Telstar asserts that the CTA gravely erred in ruling that–

1. The right of the BIR to assess its deficiency internal revenue taxes for taxable year ending December 31, 2009 through the subject Formal Letter of Demand and Final Decision on Disputed Assessment has not prescribed.

2. Both Telstar and the CIR were *in pari delicto* in the execution of the waivers.

3. Telstar was estopped from questioning the validity of the waivers.

4. The Final Assessment Notice and the Final Decision on Disputed Assessment are void for having been issued beyond the prescriptive period allowed by law.

5. There was a valid categorical demand for Telstar to pay the assessed deficiency internal revenue taxes for taxable year ending December 31, 2009.

6. Telstar was liable for: a) deficiency income tax on overclaimed salaries/expenses of PHP 7,020,352.18; b) deficiency expanded withholding tax of PHP 32,732.01; c) deficiency income tax on related disallowed expense of PHP 2,326,691.88; d) deficiency value-added tax on proceeds from sale of property cash flow of PHP 5,610.71; and e) deficiency value-added tax on disallowed input tax of PHP 2,918,401.80.

7. Telstar was liable for 25% surcharge of the assessed deficiency income tax, value-added tax, and expanded withholding tax; and

8. Telstar was liable for deficiency interest on the assessed deficiency expanded withholding tax and deficiency value-added tax.[34]

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[33] *Id.* at 1019–1045; *rollo* (G.R. Nos. 249239 & 250286), pp. 36–37; 95–96.
[34] *See rollo* (G.R. Nos. 249241–42), pp. 32–34.

In sum, Telstar avows that the right of the BIR to assess it for deficiency internal revenue taxes for taxable year ending December 31, 2009 had already prescribed.[35] The waivers executed are void and did not validly extend the prescriptive period for assessment.[36] Moreover, the Formal Letter of Demand and the attached Final Assessment Notice are void for lack of a valid demand.[37] Furthermore, Telstar maintains that it is not liable for deficiency income tax,[38] expanded withholding tax,[39] and value-added tax,[40] as well as the concomitant surcharge[41] and deficiency interest.[42]

Refuting Telstar's avowals, CIR contends that *one*, the CTA *En Banc* correctly upheld the questioned deficiency internal revenue taxes assessed against Telstar, including surcharge and deficiency interest; and *two*, it is barred from questioning the execution of the validity of the waivers.[43]

In *G.R. Nos. 249239 and 250286*, CIR anchors its petition on the sole ground of reversible error committed by the CTA *En Banc* when it held that the CTA Second Division erred not in cancelling the tax assessments it had issued.[44]

While CIR adamantly insists that the assessment against Telstar bears factual and legal support, Telstar, for its part, negates such argument. It posits that the CTA correctly cancelled the assessments against it for deficiency income tax and deficiency value-added tax on discrepancy on sales,[45] and deficiency income tax on disallowed 2008 creditable withholding tax.[46] In the same vein, the Formal Letter of Demand and the attached Final Assessment Notice are void for lack of a valid demand.[47] Void, too, are the Preliminary Assessment Notice, Final Assessment Notice, and Final Decision on Disputed Assessment for having been issued beyond the 120-day period of the BIR to complete its audit.[48]

The Court's Ruling

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35 *Id.* at 34–37.
36 *Id.* at 37–51.
37 *Id.* at 51–54.
38 *Id.* at 54–58.
39 *Id.* at 58.
40 *Id.* at 58–69.
41 *Id.* at 69.
42 *Id.* at 71–75.
43 *Rollo* (G.R. Nos. 249241–24), pp. 1081–1109, Comment (On the Petition for Review on *Certiorari* dated October 30, 2019).
44 *Rollo* (G.R. Nos. 249239 & 250286), pp. 48–65.
45 *Id.* at 1137–1139, Comment (To Respondent's Petition for Review on *Certiorari* dated October 23, 2019).
46 *Id.* at 1139–1141.
47 *Id.* at 1141–1146.
48 *Id.* at 1146–1148.

The Court shall traverse the sea of legal controversies surrounding the case at bench sequentially.

First, did the BIR act within its right when it issued the assessment against Telstar?

The Court rules in the negative. The right of the CIR to assess Telstar for deficiency taxes for taxable year 2009 had already prescribed when it assessed it for deficiency taxes and issued the Formal Letter of Demand/Final Assessment Notice on October 16, 2013.

Sections 203 and 222(b) of the Tax Code, as amended, are apropos, viz.:

> SEC. 203. **Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, interval 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 the 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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> ....
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> SEC. 222. **Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** –
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> ....
>
> (b) If before expiration of the time prescribed in Sectoin 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.

Corollarily, waivers extending the prescriptive period of tax assessments must be compliant with Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01 dated August 2, 2002.[49]

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[49] *See Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, 814 Phil. 933, 942–943 (2017) [Per J. Caguioa, First Division] where the Court outlined the procedure for the proper execution of a valid waiver under RMO 20-90 and RDAO 05-01:

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**

In the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,[50] this Court invalidated waivers that did not strictly comply with the provisions of Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01 such as, but not to:

> 1) Failure to state the specific date within which the BIR may assess and collect revenue taxes;
> 2) Failure to sign by the CIR as mandated by law or by his duly authorized representative;
> 3) Failure to indicate the date of acceptance to determine whether the waiver was validly accepted before the expiration of the original three-year period;
> 4) Failure to furnish the taxpayer of a copy of the waiver;
> 5) Failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy;
> 6) Execution of the waivers without the written authority of the taxpayer's representative to sign the waiver on their behalf;
> 7) Absence of any proof that the taxpayer was furnished a copy of the waiver;
> 8) A waiver signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR;
> 9) Failure to specify the kind and amount of tax due; and
> 10) A waiver which refers to a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case.[51]

Generally, when a waiver fails to comply with the requisites under Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes.[52] However, the Court recognized exceptions to this general rule following the equitable principles of *in pari delicto* or "in equal fault" and *estoppel*.[53] Thusly, the Court applied the doctrine of *estoppel* in cases where the taxpayer failed to raise the invalidity

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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 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. (Emphasis in the original)

50 910 Phil. 11 (2021) [Per J. Hernando, Third Division].

51 *See id.* at 21–22.

52 *See Commissioner of Internal Revenue v. Next Mobile, Inc.*, 774 Phil. 428, 443 (2015) [Per J. Velasco, Jr., Third Division].

53 *See id.* at 443–445.

of the waivers at the earliest opportunity and where the taxpayer benefited from the waiver.[54]

In the present case, CIR had until April 15, 2013 for income tax, January 25, 2013 for value-added tax, and January 28, 2013 for expanded withholding tax, within which to assess Telstar for deficiency taxes covering taxable year 2009. If valid, the waivers would have effectively extended such period to June 30, 2013 for the *first waiver* and December 31, 2013 for the *second waiver*.

This Court thus proceeds to test the waivers executed by Telstar through the prism of Revenue Memorandum Order No. 20-90, Revenue Delegation of Authority Order No. 05-01, and relevant jurisprudence. Upon scrutiny, the executed waivers suffer from several defects. *First*, the request made was for an extension of time within which to present additional documents, and not for the reinvestigation and/or reconsideration of the pending internal revenue case as required under Revenue Memorandum Order No. 20-90. *Second*, the subject waivers failed to specify the kind and amount of taxes due. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity.[55] *Third*, the subject waivers were not signed by the Commissioner but by Assistant Commissioner Masajon, the officer-in-charge of the Large Taxpayers Service. The requirement in Revenue Memorandum Order No. 20-90 clearly specifies that it is the Commissioner who should sign for the BIR such waivers where the taxes exceed PHP 1,000,000.00.[56]

Notably, on the part of Telstar, the waivers were signed by Puyo without any notarized written authority to do so. However, in signing the correspondence[57] with the CIR (including the reply to the Preliminary Assessment Notice and the protest to the Formal Letter of Demand), Puyo effectively held herself out as authorized by Telstar to act on its behalf. Nevertheless, it was ultimately the responsibility of the BIR to ensure that the waivers executed by Telstar strictly complied with the legal requirements for their validity before accepting them. In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*,[58] this Court edifyingly explicated—

> *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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54 *See Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, 821 Phil. 664, 676–677 (2017) [Per J. Leonen, Third Division].

55 *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*, 814 Phil. 933, 945 (2017) [Per J. Caguioa, First Division].

56 *See Commissioner of Internal Revenue v. Standard Chartered Bank*, 765 Phil. 102, 117 (2015) [Per J. Perez, First Division].

57 *Rollo* (G.R. Nos. 249241–42), pp. 323–329, 373–376, 645–648.

58 749 Phil. 280 (2014) [Per C.J. Sereno, First Division].

> 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.[59] (Emphasis supplied).

True, Telstar failed to present the notarized authority of its president and general manager who signed the waivers on its behalf, which is a clear violation of Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01. However, the BIR did not ensure that all supporting documents were attached before accepting the waivers, including the notarized written authority of Telstar's representative to sign them on the corporation's behalf. Thus, the BIR's inaction was the proximate cause of the defects in the waiver, thereby preventing the extension of the period to assess or collect taxes against Telstar.[60]

To be sure, Telstar did not derive any benefit from the defective waiver, as it did not require additional time to submit the necessary documents. Prior to the execution of the *first waiver* in September 2012, Telstar had already provided the BIR with substantially all the required records. Notwithstanding this, the Preliminary Assessment Notice was issued to Telstar on June 13, 2013, three years after its initial submission of documents on June 11, 2010.[61] Accordingly, the equitable principles of *in pari delicto* or "in equal fault", as an exception to the general rule, are inapplicable in this case,[62] given that Telstar did not rely on the defective waivers to postpone or delay its tax obligations.

Moreover, Telstar was not estopped from invoking the defense of prescription. In this regard, it bears emphasis that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver. As the Court clarified in *Commissioner of Internal Revenue v. Kudos Metal Corp.*[63]—

> The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of

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59 *Id.* at 291.

60 *See id.*

61 *Rollo* (G.R. Nos. 249239 & 250286), p. 12, CTA *En Banc* Decision.

62 *See Commissioner of Internal Revenue v. Next Mobile, Inc.*, 774 Phil. 428, 443 (2015) [Per J. Velasco, Jr., Third Division].

63 634 Phil. 314 (2010) [Per J. Del Castillo, Second Division].

> estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. *It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.*
>
> Moreover, *the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued.* As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[64] (Emphasis supplied; citations omitted)

At this juncture, it must be emphasized that there is nothing vague or difficult to understand about the procedural guidelines. CIR and the revenue officials knew fully well the drastic consequences of noncompliance with Revenue Memorandum Order No. 20-90 and Revenue Delegation of Authority Order No. 05-01 and yet, they utterly failed to faithfully follow these BIR issuances. Clearly, the BIR is not entitled to the mantle of protection accorded by the doctrine of estoppel. Having caused the defects in the waivers, the BIR must bear the consequence of its own negligence.[65]

With the foregoing disquisitions, the Court rules and so holds that the waivers were void and as such, did not extend the prescriptive period to assess Telstar for deficiency taxes. Accordingly, the Formal Letter of Demand and the Final Assessment Notice issued by the CIR on October 13, 2013 are void and of no legal effect.

Second, was there a valid categorical demand for Telstar to pay the deficiency taxes for taxable year 2009?

An assessment "refers to the determination of amounts due from a person obligated to make payments." In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997.[66]

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64 *Id.* at 328. (Emphasis supplied)

65 *Universal Weavers Corporation v. Commissioner of Internal Revenue*, 903 Phil. 160, 173 (2021) [Per J. Delos Santos, Third Division].

66 *See Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391, 404–405 (2016) [Per J. Leonen, Second Division]. (Citation omitted)

Section 228 of the Tax Code and Revenue Regulations No.12-99[67] outline the procedure in tax assessment. Section 228 reads:

> SEC. 228. **Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> 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.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of

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[67] Implements the provisions of the National Internal Revenue Code of 1997 governing the rules on assessment of national internal revenue taxes, fees and charges (1999). Revenue Regulations No. 18-2013, effective on December 15, 2013, amended Revenue Regulations No. 12-99.

> Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis in the original)

On the other hand, Section 3 of Revenue Regulations No. 12-99, which implements Section 228 of the Tax Code, provides for the due process requirement in the issuance of a deficiency tax assessment, viz.:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records *shall*, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer *shall* be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he *shall* be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, *shall* endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office *shall* issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (*See* illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he *shall* be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> 3.1.3 *Exceptions to Prior Notice of the Assessment.* — The notice for informal conference and the preliminary assessment notice *shall* not be required in any of the following cases, in which case, issuance of the formal

assessment notice for the payment of the taxpayer's deficiency tax liability *shall* be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(iv) When the excise tax due on excisable articles has not been paid; or
(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 *Formal Letter of Demand and Assessment Notice.* — **The formal letter of demand and assessment notice *shall* be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes *shall* state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*** (*See* illustration in ANNEX B hereof). The same *shall* be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative *shall* acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer *shall* be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter *shall* be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action *shall* be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues *shall* be suspended.

The taxpayer *shall* state the facts, 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*. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same *shall* be considered undisputed issue or issues, in which case, the taxpayer *shall* be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer *shall* submit the required 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, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer *shall* state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment *shall* become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment *shall* become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision *shall* not be considered final, executory and demandable, in which case, the protest *shall* be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment *shall* become final, executory and demandable.

3.1.6 *Administrative Decision on a Disputed Assessment.* — The decision of the Commissioner or his duly authorized representative *shall* (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (*See* illustration in ANNEX C hereof), in which case, the same *shall* not be considered a decision on a disputed assessment; and (b) that the same is his *final decision.*

> 3.1.7 *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same *shall* be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same *shall* be constructively served on the taxpayer. Constructive service thereof *shall* be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same *shall* make a written report of this matter which *shall* form part of the docket of this case (see illustration in ANNEX D). (Emphasis in the original; emphasis supplied)

The Formal Letter of Demand/Final Assessment Notice provides for the tax due with a demand for payment. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[68] this Court explicated—

> The word "shall" in Section 228 of the Tax Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed.[69] (Citation omitted)

In fact, this Court has enjoined strict observance by the BIR of the prescribed procedure for the issuance of assessment notices in order to uphold the taxpayer's constitutional rights.[70]

Stated differently, the final assessment is a notice to the effect that the amount therein is due as tax and a demand for payment thereof. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine the remedies.[71]

The Court, in *Fitness by Design, Inc.,* invalidated the disputed Final Assessment Notice for lack of definite amount of tax liability and defective demand for payment, viz.:

> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a

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68 799 Phil. 391 (2016) [Per J. Leonen, Second Division].

69 *Id.* at 409.

70 *See Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, 929 Phil. 644, 653 (2022) [Per J. Dimaampao, Third Division]. (Citations omitted)

71 *See Commissioner of Internal Revenue v. Menguito*, 587 Phil. 234, 256 (2008) [Per J. Austria-Martinez, Third Division]. (Citations omitted)

"written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[72] (Emphasis in the original)

In the case at bench, a plain reading of the Formal Letter of Demand/ Final Assessment Notice readily reveals that no demand for payment of the assessed taxes was made:

> Pursuant to the provision of **Section 228** of the aforesaid Code and its Implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from

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[72] *Commissioner of Internal Revenue v. Fitness By Design, Inc.* 799 Phil. 391, 417–419 (2016) [Per J. Leonen, Second Division].

> receipt hereof. However, if you are amenable, **you may pay the above assessment through the Electronic Filing and Payment Section (EFPS).** Afterwards, **submit proof of payment thereof to the Regular Large Taxpayers Audit Division 1 located at Rm 216, National Office Building, Diliman, Quezon City** for updating of your records.
>
> If we fail to hear from you within the said period, you shall be considered in default, in which case, a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid deficiency taxes, inclusive of civil penalty and interest.[73] (Emphasis in the original)

To recapitulate, the Formal Letter of Demand/Final Assessment Notice must contain a categorical demand for payment of assessed tax with factual and legal bases. This is because an obligation to pay the tax is being imposed upon the taxpayer. Such obligation must be stated in a clear and plain language to properly apprise the taxpayer. Moreover, based on the document title itself, the Formal Letter of Demand/Final Assessment Notice is a demand for payment of taxes. Perceptibly, it must contain a demand for payment of assessed taxes. Absent such demand, it is rendered defective.

A subsequent demand contained in the Final Decision on Disputed Assessment does not cure the defective Formal Letter of Demand/Final Assessment Notice. The law, rules and regulations require the demand for payment of assessed tax to be made in the Formal Letter of Demand/Final Assessment Notice and not in the Final Decision on Disputed Assessment. The Formal Letter of Demand/Final Assessment Notice and Final Decision on Disputed Assessment have divergent functions. The first one calls for the payment of the taxpayer's deficiency tax while the second one informs the taxpayer of respondent's final decision on any protest filed. Surely, a subsequent demand contained in the Final Decision on Disputed Assessment does not cure the lack of any demand in the Formal Letter of Demand/Final Assessment Notice.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect.[74] It follows, therefore, that absent a categorical demand for payment, the Formal Letter of Demand/Final Assessment Notice is not a valid assessment.

With the foregoing disquisitions, the Court finds no reason to resolve the other matters raised by the parties.

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73 *Rollo* (G.R. Nos. 249239 & 250286), p. 109; *rollo* (G.R. Nos. 249241–42), p. 364.

74 *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division] at 11. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Citation omitted)

ACCORDINGLY, the Court **RESOLVES TO**:

1. **GRANT** the Petition for Review on *Certiorari* in G.R. Nos. 249241–42 filed by Telstar Manufacturing Corporation;

2. **DENY** the Petition for Review on *Certiorari* in G.R. Nos. 249239 and 250286 lodged by the Commissioner of Internal Revenue;

3. **REVERSE and SET ASIDE** the April 15, 2019 Decision and the September 10, 2019 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1797 and 1879; and

4. **DECLARE NULL AND CANCELLED** the deficiency tax assessments issued against Telstar Manufacturing Corporation for taxable year 2009.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

On official business but left his concurring vote

SAMUEL H. GAERLAN
Associate Justice

On leave
MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII. Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of this Court.

MARVIC M.V.F. LEONEN
Acting Chief Justice
Per Special Order No. 3160
Dated February 6, 2025

THIRD DIVISION

G.R. Nos. 249239 & 250286 — COMMISSIONER OF INTERNAL REVENUE, Petitioner, **v. TELSTAR MANUFACTURING CORPORATION,** Respondent.

G.R. Nos. 249241–42 — TELSTAR MANUFACTURING CORPORATION, Petitioner, **v. COMMISSIONER OF INTERNAL REVENUE,** Respondent.

Promulgated:

FEB 10 2025

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CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* reverses the Decision dated April 15, 2019 and Resolution dated September 10, 2019 of the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Nos. 1797 and 1879, and cancels the deficiency tax assessments issued against Telstar Manufacturing Corporation (Telstar) for taxable year (TY) 2009 on the following grounds: (a) defective Waivers of the Statute of Limitations (waivers) do not extend the prescriptive period to assess deficiency taxes; and (b) lack of a categorical demand for payment in the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN).

I submit this Concurring Opinion to expound on the first ground above and underscore what I have maintained from the very beginning—that Telstar and the Bureau of Internal Revenue (BIR) were **never** *in pari delicto* and that Telstar was **not** estopped from questioning the validity of the waivers. It is the BIR's responsibility—as the government agency responsible for enforcing tax laws—to ensure that waivers strictly comply with the prescribed requirements of Revenue Memorandum Order (RMO) No. 20-90[1] and Revenue Delegation Authority Order (RDAO) No. 05-01[2] before signing and accepting them. In this case, despite clear defects in the waivers, the BIR still signed and accepted them. Since the BIR itself failed to comply with its own guidelines, the waivers could not have validly extended the prescriptive period to assess Telstar's deficiency taxes.

The waivers in this case suffered from significant defects, failing to meet the requirements of RMO No. 20-90 and RDAO No. 05-01, because: (a) they were executed only to extend the period to submit documents, rather than a reinvestigation and/or reconsideration of the pending internal revenue case;

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[1] Proper Execution of Waiver of Statute of Limitations Under the NIRC, Revenue Memorandum Order No. 20-90, April 4, 1990.

[2] Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, Revenue Delegation Authority Order No. 05-01, August 2, 2001.

(b) they did not specify the kind and amount of taxes due; (c) despite the requirement that tax amounts exceeding PHP 1,000,000.00 must be approved by the Commissioner of Internal Revenue (CIR), they were not signed by the CIR but by an Assistant CIR instead; and (d) they were signed by Telstar's president and general manager without notarized authority.[3]

To provide more context, the BIR had until April 15, 2013 for income tax, January 25, 2013 for value-added tax, and January 28, 2013 for expanded withholding tax, within which to assess Telstar for deficiency taxes covering TY 2009. If valid, the waivers would have effectively extended such period to June 30, 2013 for the first waiver and December 31, 2013 for the second waiver.[4]

Tax Type	**Expiration of original three-year period to assess**	**First Waiver Extension**	**Second Waiver Extension**	**Issuance of FLD/FAN**
Income Tax	April 15, 2013	June 30, 2013	December 31, 2013	October 13, 2013
Value-added Tax	January 25, 2013	June 30, 2013	December 31, 2013	October 13, 2013
Expanded Withholding Tax	January 28, 2013	June 30, 2013	December 31, 2013	October 13, 2013

I had consistently maintained, and now the *ponencia* agrees, that the waivers here were defective and could not have extended the prescriptive period. As such, the BIR was not within its right to assess Telstar for deficiency taxes for TY 2009 as the period to do so had already prescribed by the time it issued the FLD/FAN on October 13, 2013.

Analysis of cases involving defective waivers

Section 203 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, governs the period of limitation in the assessment and collection of taxes:

> 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. (Emphasis supplied)

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3 *Ponencia*, p. 11.
4 *Id.*

Meanwhile, Section 222(b) of the 1997 NIRC authorizes the extension of the original three-year prescriptive period upon the execution of a valid waiver between the taxpayer and the BIR, provided: (1) the agreement was made before the expiration of the three-year period, and (2) the guidelines in the proper execution of the waiver are strictly followed,[5] thus:

> Section 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. (Emphasis supplied)

In relation to the implementation of Section 222(b) of the 1997 NIRC, RMO No. 20-90 and RDAO No. 05-01 were issued on April 4, 1990 and August 2, 2001, respectively, to provide guidelines on the proper execution of the waiver. These requisites of a valid waiver were summarized by the Court in *CIR v. Stanley Works Sales (Phils.), Inc*:[6]

> 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[/herself] or his[/her] 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[/her] 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[/her] must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his[/her] duly authorized representative**.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the [BIR] 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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5 *Republic v. First Gas Power Corp.*, 919 Phil. 769, 775 (2022) [Per J. J. Lopez, First Division].

6 749 Phil. 280 (2014) [Per C.J. Sereno, First Division].

> 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.[7] (Emphasis supplied)

The taxable period involved in this case pertains to year 2009 and the waivers were executed in September 2012 and June 2013. Hence, the relevant BIR issuances which should be observed in executing the waivers are RMO No. 20-90 and RDAO No. 05-01.

In the following cases, the Court invalidated the waiver for failure to conform with RMO No. 20-90 and RDAO No. 15-01:

> In *Philippine Journalists, Inc. v. CIR*[8] (*Philippine Journalists*), the Court ruled that the waiver signed by therein taxpayer's comptroller was invalid because of the following defects: (a) it did not specify a definite agreed date between the BIR and the taxpayer, within which the former may assess and collect revenue taxes; (b) considering that this involved taxes amounting to more than PHP 1,000,000.00, it should have been signed by the CIR, and not the revenue district officer; (c) there was no date of acceptance; and (d) the taxpayer was not furnished a copy of the waiver.
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> More, in *CIR v. Kudos Metal Corporation*[9] (*Kudos Metal*), the Court held that defective waivers did not extend the period to assess or collect taxes. The waivers executed by therein taxpayer's accountant revealed the following infirmities: (a) they were executed without the notarized written authority of the taxpayer's representative to sign the waiver on its behalf; (b) lack of date of acceptance by the BIR; and (c) the fact of receipt by the taxpayer of its file copy was not indicated in the original copies of the waivers.
>
> Similarly, in *CIR v. Standard Chartered Bank*[10] (*Standard Chartered Bank*), the waivers were in clear violation of RMO No. 20-90 because: (a) they were not signed by the CIR considering that it involved assessment amounting to more than PHP 1,000,000.00; (b) the date of acceptance was not indicated; (c) they did not specify the kind and amount of the tax due; and (d) the tenor of the waiver speaks of a request for extension of time within which to present additional documents, and not the approval by the CIR of the taxpayer's request for reinvestigation

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7 *Id.* at 290, citing *CIR v. Kudos Metal Corporation*, 634 Phil. 314, 325–326 (2010) [Per J. Del Castillo, Second Division].

8 488 Phil. 218, 232–235 (2004) [Per J. Ynares-Santiago, First Division].

9 634 Phil. 314, 326 (2010) [Per J. Del Castillo, Second Division].

10 765 Phil. 102, 117 (2015) [Per J. Perez, First Division].

and/or reconsideration of its pending internal revenue case as provided under RMO No. 20-90.

Additionally, in *CIR v. Systems Technology Institute, Inc.*[11] (*Systems Technology Institute*), the waivers suffer from the following defects: (a) the period for the BIR to assess the taxpayer for deficiency taxes had already prescribed when the first waiver took effect; (b) the taxpayer's signatory to the three waivers had no notarized written authority from the corporation's board of directors; and (c) similar to *Standard Chartered Bank*, the waivers did not specify the kind of tax and the amount of tax due.

The Court, in *CIR v. Philippine Daily Inquirer, Inc.*[12] (*Philippine Daily Inquirer*), **emphasized that the BIR cannot shift the blame to the taxpayer for issuing defective waivers. The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO No. 20-90 and RDAO No. 05-01 which were issued by the BIR itself.**

More recently, in *Republic v. First Gas Power Corp.*,[13] the Court reaffirmed that the provisions of the RMO No. 20-90 and RDAO No. 05-01 are **mandatory and require strict compliance, hence, failure to comply with any of the requisites renders a waiver defective and ineffectual**.

The foregoing cases illustrate that **the obligation to ensure compliance with the requirements for a valid waiver rests with the BIR**. This is premised on the rationale explained by the Court in *Philippine Journalists*, which emphasized 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 and must therefore be carefully and strictly construed.** The waiver of the 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**

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11 814 Phil. 933, 945 (2017) [Per J. Caguioa, First Division].
12 807 Phil. 912, 941 (2017) [Per J. Carpio, Second Division].
13 919 Phil. 769, 778 (2022) [Per J.Y. Lopez, First Division].

> **protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed.**[14] (Emphasis supplied)

However, in *CIR v. Next Mobile, Inc.*[15] (*Next Mobile*), the Court ruled that a taxpayer cannot impugn the validity of its own waivers after having benefitted from them, particularly when the waivers allowed the taxpayer to defer the issuance of assessments and gain additional time to submit supporting documents. In *Next Mobile*, the Court acknowledged that, as a general rule, a waiver that does not comply with the requisites for validity specified under RMO No. 20-90 and RDAO No. 05-01 is invalid and ineffective to extend the prescriptive period to assess deficiency taxes. **Due to peculiar circumstances** obtaining, the Court treated *Next Mobile* as an exception to the rule, and considered the waivers as valid based on a finding that both the taxpayer and the BIR were *in pari delicto* in causing the deficiencies of the waivers. The taxpayer's act of impugning its waivers after benefitting from them was considered an act of bad faith:

> In the instant case, the CTA found the Waivers [defective] 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 [the taxpayer] of its copy of the Second Waiver was not indicated on the face of the original Second Waiver.
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> To be sure, both parties in this case are at fault.
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> . . . .
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> **Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, [the taxpayer] did not even question the validity of the Waivers or call attention to their alleged defects.**
>
> In this case, [the taxpayer], 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, [the taxpayer] 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, [the taxpayer] challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, [the taxpayer's] act of impugning these Waivers after benefiting therefrom and allowing [the BIR] to rely on the same is an act of bad faith.**
>
> 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 [the taxpayer] after the prescriptive period, it

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[14] *Philippine Journalists, Inc. v. CIR*, *supra* note 8, at 231–232.

[15] 774 Phil. 428, 442 (2015) [Per J. Velasco, Jr., Third Division].

> 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 [the taxpayer]. 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 to even comply with its most basic requirements.
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> 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 [the taxpayer] 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. It even openly admitted that it did not require [the taxpayer] to present any notarized authority to sign the questioned Waivers. The BIR failed to demand [the taxpayer] 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.[16] (Emphasis supplied)

The cases of *CIR v. Transitions Optical Philippines, Inc.*[17] (*Transitions Optical*) and *Asian Transmission Corporation v. CIR*[18] (*Asians Transmission*) adopted the Court's ruling in *Next Mobile* as to the application of the equitable principles of *in pari delicto*, unclean hands, and estoppel.

In *Transitions Optical*, the Court said that the taxpayer was estopped from questioning the validity of the waivers. While the BIR was at fault for accepting defective waivers, the taxpayer failed to challenge its validity at the earliest opportunity. It thereby impliedly recognized the waivers' validity and its representatives' authority to execute them. The Court noted that the taxpayer only raised the issue of the waivers' validity in its Petition for Review filed with the CTA. Moreover, the taxpayer benefited from the waivers as it extended the period to fully comply with the BIR notices for audit examination and to respond to its Informal Conference request to discuss the discrepancies. Thus, having benefitted from the waivers executed at its instance, the taxpayer was estopped from claiming that they were invalid.

Then, in *Asian Transmission*, the Court went even further by explicitly saying that "the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the [CIR] may not be blamed for any defects in the execution of the waiver."[19] In effect, *Asian Transmission* placed greater emphasis on the taxpayer's role in preparing the waivers. Moreover, in ruling that the principle of estoppel was applicable, the Court reasoned that the execution of the

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16 *Id.* at 440–443.
17 821 Phil. 664 (2017) [Per J. Leonen, Third Division].
18 840 Phil. 385 (2018) [Per J. Bersamin, First Division].
19 *Id.* at 386.

waivers was to the advantage of the taxpayer because the waivers would provide to the taxpayer the sufficient time to gather and produce voluminous records for the audit.

The Court's rulings in *Next Mobile*, *Transitions Optical*, and *Asian Transmission* collectively highlight that a taxpayer who executes defective waivers, benefits from their execution, and fails to raise objections at the earliest opportunity cannot later use their invalidity as a defense against tax assessments.

I find more appropriate the ruling in *Philippine Journalists* and subsequent cases that consistently underscored the BIR's duty to ensure compliance with the requirements of a valid waiver.

The statutory basis for the concept of a waiver is provided in Section 222(b) of the 1997 NIRC, which allows the government an extended period to assess provided "both the [CIR] and the taxpayer have agreed in writing" to such an extension. ***This provision underscores that a waiver primarily serves the government's interests, as it grants the BIR additional time to issue an assessment beyond the ordinary three-year prescriptive period. Since this extension is a concession granted to the government rather than a right of the taxpayer, it logically follows that the BIR bears the responsibility of ensuring that waivers comply with all formal requirements before they are accepted as valid.***

Applying the foregoing rules and jurisprudence, the waivers in question did not validly extend the original three-year prescriptive period to assess Telstar's deficiency taxes.

The present case falls under the general rule that defective waivers do not extend the prescriptive period to assess deficiency taxes

Considering the deficiencies of the subject waivers are undisputed, it is necessary to examine how the Court has ruled in cases with similar waiver defects and how these rulings apply to the present case.

First, the waivers executed by Telstar were based on a request for an extension of time to present additional documents, rather than a request for reinvestigation and/or reconsideration of the pending internal revenue case, as required by RMO No. 20-90. In *Standard Chartered Bank*, the Court declared that a waiver executed for the wrong purpose—such as a request for an extension of time to submit additional documents—does not validly extend the prescriptive period. Since Telstar's waiver was executed on an improper basis, it is defective and ineffective, just as the waiver in *Standard Chartered Bank* was ruled invalid.[20]

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[20] *See CIR v. Standard Chartered Bank*, *supra* note 10, at 116–117.

Second, the waivers failed to specify the kind and amount of taxes due. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. The Court underscored this principle in its ruling in *Systems Technology Institute*, emphasizing the necessity of this specific information in the waiver for its validity.[21] Since Telstar's waivers lack the kind and amount of taxes due, they suffer from the same fatal flaw that the Court has previously ruled as rendering the waivers void.

Third, the waivers were signed by the Assistant CIR instead of the CIR, despite the fact that the tax assessment exceeded PHP 1,000,000.00, in violation of RMO No. 20-90. As explicitly held in *Philippine Journalists* and *Standard Chartered Bank*, the CIR's conformity is required for high-value tax assessments, and the absence of the CIR's signature renders the waiver void. Since Telstar's waivers were not signed by the CIR despite exceeding the threshold, they are void and cannot extend the prescriptive period.

Finally, Telstar's president and general manager signed the waivers without a notarized written authority from the corporation's board of directors. In this regard, the Court held in *Systems Technology Institute* that RDAO No. 05-01 mandates the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or its authorized representative before affixing his or her signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The waiver should not be accepted by the concerned BIR office and official unless notarized.[22]

Given that the waivers in this case suffer from the same fatal defects as those in *Philippine Journalists*, *Kudos Metal*, *Standard Chartered Bank*, and *Systems Technology Institute*, they must be declared void and without legal effect. There is no reason to depart from the general rule that defective waivers are void and cannot extend the prescriptive period. Accordingly, the FLD/FAN, which assessed Telstar for deficiency taxes for TY 2009, is invalid because it was issued beyond the three-year prescriptive period provided under Section 203 of the 1997 NIRC.

The ruling in Next Mobile is not applicable to the present case; Telstar and the BIR were not in pari delicto

As the *ponencia* **now** states, Telstar and the BIR were not *in pari delicto*.[23] It was ultimately the responsibility of the BIR, as the office that issued RMO No. 20-90 and RDAO No. 05-01, to ensure that the waivers

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21 *CIR v. Systems Technology Institute, Inc.*, *supra* note 11, at 945.
22 *Id.*
23 *Ponencia*, p. 12.

executed by Telstar strictly complied with the legal requirements for their validity before accepting them. The BIR, as the tax authority, is in a position of control over the waiver process and has the ability to require corrections or demand compliance with formalities before recognizing the waivers as valid.

While Telstar's president and general manager signed the waivers without presenting a notarized authority—undeniably a violation of RMO No. 20-90 and RDAO No. 05-01—the burden of ensuring compliance did not rest on Telstar. **It was the BIR's responsibility to verify that all supporting documents were attached before accepting the waivers, including the notarized written authority of Telstar's representative to sign them on the corporation's behalf.** The BIR could have simply required the submission of such authority, but it did not. Since the final decision to accept or reject the waivers rested with the BIR, it would be unfair to hold Telstar equally responsible for the defects in their execution.

To emphasize, it is the BIR's duty—not the taxpayer's—to ensure that waivers meet all the requirements of RMO No. 20-90 and RDAO No. 05-01. The BIR is the party that relies on the waiver to extend its power to assess taxes beyond the prescriptive period. A waiver is not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension.[24] It follows that the BIR's role is not merely passive, and it cannot accept defective waivers without consequence. The misplaced emphasis on Telstar's responsibility ignores the reality that the BIR is in the best position to ensure that waivers conform to the requirements under RMO No. 20-90 and RDAO No. 05-01 before accepting them.

More importantly, the fundamental differences between the present case and *Next Mobile* have always been clear from the outset. By virtue of the defective waivers, the taxpayer in *Next Mobile* was given the opportunity to gather and submit documents to substantiate its claims before the BIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. The taxpayer allowed the BIR to rely on the defective waivers and did not raise any objection against their validity until the BIR assessed taxes and penalties against it.

Such is not the scenario in the instant case. There is no indication that Telstar deliberately relied on the defective waivers to gain an advantage or that it engaged in any act of bad faith. Telstar did not require additional time to submit its documents, as it had already provided substantially all the necessary records to the BIR even before the first waiver was executed in September 2012.[25] Yet, despite having received multiple documents, Telstar only received the Preliminary Assessment Notice on June 18, 2013,[26] three years after its first submission of documents on June 11, 2010. Telstar did not use the waivers

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[24] *CIR v. Stanley Works Sales (Phils.), Inc., supra* note 6, at 291.

[25] Telstar submitted its documents as evidenced by transmittal letters dated: June 11, 2010, July 7, 2010, September 30, 2010, February 17, 2011, March 3, 2011, and March 13, 2013. *See rollo*, p. 12, CTA EB Decision.

[26] *See ponencia*, p. 3.

as a tool to postpone tax obligations. **The only party that benefitted from the extended period was the BIR, which used it to finalize its assessment.** Applying the doctrine in *Next Mobile* would therefore be improper, as Telstar did not act in bad faith and had no practical need for the additional time. Even the Court in *Next Mobile* recognized that its ruling was an exception, not the general rule. The Court in that case expressly stated that its ruling was due to the **"peculiar circumstances"** of the case.

Accordingly, it is the BIR which shall ensure that the waiver is duly accomplished and signed by the taxpayer or his or her authorized representative before an authorized revenue official affixes his or her signature to signify acceptance of the same.[27] The BIR's failure to comply with the requirements of a valid waiver should not be excused, and the taxpayer should not be burdened with the consequences of the BIR's negligence. **The peculiar circumstances attendant in *Next Mobile* cannot be made to apply to all cases which involve the issue of defective waivers.** The better and more consistent rule is that a waiver must strictly comply with the requirements under RMO No. 20-90 and RDAO No. 05-01, and if it fails to do so, the waiver shall be deemed void and cannot be used to extend the BIR's power to assess taxes.

Telstar was not estopped from invoking the defense of prescription

As well, there is no justification for the application of the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes, particularly in light of the detailed procedure for the proper execution of waivers set forth in RMO No. 20-90 and RDAO No. 05-01, which the BIR is bound to follow strictly. Thus, in *Kudos Metal*, the Court said:

> The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. **It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.**
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> Moreover, **the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued**. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant,

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[27] RDAO No. 05-01.

> and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence.** It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[28] (Emphasis supplied)

The guidelines under RMO No. 20-90 and RDAO No. 05-01 are clear, specific, and unambiguous, leaving no room for discretionary interpretation or noncompliance. The BIR and its revenue officials were fully aware of the consequences of failing to adhere to these requirements, yet they failed to faithfully implement them. Since the BIR itself caused the defects in the waivers by disregarding its own procedural mandates, it must bear the consequences of its own negligence and cannot now seek protection under the doctrine of estoppel.[29]

Additionally, Telstar's decision to raise the issue of the waivers' validity only at a later stage does not amount to bad faith. A void waiver cannot acquire legal force simply because it was not challenged earlier. The BIR, having had the power to demand a valid waiver from the beginning, cannot later argue that Telstar should be bound by a defective document that the BIR itself accepted without proper verification.

Again, the responsibility of ensuring that waivers comply with legal requirements lies with the BIR, not the taxpayer. The BIR cannot shift this burden onto taxpayers by invoking estoppel, especially when it was the one that accepted defective waivers in the first place. Doing so would create a perverse incentive for the BIR to be as negligent as it wants in ensuring compliance with the requirements of a valid waiver, knowing that even if it consistently accepts defective waivers, the taxpayer will always be held equally at fault and estopped from raising objections later. Worse, it would render meaningless the strict requirements for a valid waiver—if a defective waiver can still be upheld through estoppel, then compliance with the requirements under RMO No. 20-90 and RDAO No. 05-01 becomes optional. The BIR cannot be allowed to disregard its own rules and then expect taxpayers to bear the consequences of its mistakes.

The very reason why the 1997 NIRC provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment. 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**.[30] Thus, the Court should always bear in mind that "[a] waiver of the statute of limitations under the [1997] NIRC, to a certain extent, is **a derogation of the taxpayers' right to security against**

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28 *CIR v. Kudos Metal Corporation*, *supra* note 9, at 328–329.

29 *See Universal Weavers Corp. v. Commissioner of Internal Revenue*,903 Phil. 160, 173 (2021) [Per J. Delos Santos, Third Division].

30 *CIR v. Standard Chartered Bank*, *supra* note 10, at 114.

prolonged and unscrupulous investigations and must therefore be carefully and strictly construed."[31] The strict formalities governing waivers were precisely established to prevent indefinite extensions and to ensure fairness in tax enforcement. It ensures that the BIR cannot arbitrarily extend the prescriptive period without clear and proper authorization from the taxpayer. As such, the doctrine of estoppel must be sparingly applied. It should not be used as a blanket rule to uphold defective waivers. The only instance in which estoppel should be applied against a taxpayer is when the taxpayer is guilty of bad faith. However, no such bad faith is present here.

Verily, I agree with the finding that the assessment against Telstar is void, not only because of the lack of a demand for payment in the FLD/FAN, but more importantly because of prescription. Given that there was failure to comply with the requirements under RMO No. 20-90 and RDAO No. 05-01, the subject waivers are void and as such, did not extend the prescriptive period to assess Telstar for deficiency taxes. The FLD/FAN, which was issued by the BIR beyond the three-year prescriptive period, is therefore considered void and of no legal effect.

Accordingly, I VOTE to reverse and set aside the Decision dated April 15, 2019 and the Resolution dated September 10, 2019 of the Court of Tax Appeals *En Banc* in CTA EB Nos. 1797 and 1879, and declare null and void the deficiency tax assessments issued against Telstar for TY 2009.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[31] *Philippine Journalists, Inc. v. CIR*, *supra* note 8, at 231–232. Emphasis supplied.