



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,  
 represented by the BUREAU OF  
 INTERNAL REVENUE,

G.R. No. 214933

Present:

Petitioner,

GESMUNDO, C.J., Chairperson,  
 CAGUIOA,  
 LAZARO-JAVIER, and  
 LOPEZ, M. and  
 LOPEZ, J., JJ.

- versus -

FIRST GAS POWER  
 CORPORATION,

Promulgated:

Respondent.

FEB 15 2022

X-----  
*[Signature]*

DECISION

LOPEZ, J., J.:

This is a Petition for Review on *Certiorari*<sup>1</sup> filed by petitioner Bureau of Internal Revenue (*BIR*) assailing the Decision<sup>2</sup> dated May 12, 2014 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 972. The *CTA En Banc* affirmed the Decision<sup>3</sup> of the *CTA* Third Division dated September 24, 2012, which, in turn, granted respondent First Gas Power Corporation's (*First Gas*) appeal assailing the Final Assessment Notices and Formal Letters of Demand, all dated July 19, 2004, issued by petitioner against respondent for deficiency income taxes and penalties for the taxable years 2000 and 2001.

*The Facts*

On October 24, 2002, First Gas received a Letter of Authority from the petitioner authorizing the *BIR* representative to examine the book of accounts

<sup>1</sup> *Rollo*, pp. 9-47.

<sup>2</sup> Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy (on leave), Caesar A. Casanova (on leave), Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas; *id.* at 55-67.

<sup>3</sup> Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas; *id.* at 74-86.

*[Handwritten mark]*

and other accounting records of First Gas for all revenue taxes for the taxable years 2000 and 2001.<sup>4</sup>

On September 30, 2003, First Gas received a Notice to Taxpayer from petitioner requesting it to appear for an informal conference on October 15, 2003.<sup>5</sup>

Thereafter, on March 11, 2004, First Gas received Preliminary Assessment Notices (*PAN*) dated December 15, 2003 and January 28, 2004, wherein it was assessed for the following deficiency taxes and penalties for the taxable years 2000 and 2001:

- a. Deficiency Income Tax for 2000 - ₱84,571,959.65
- b. Deficiency Income Tax for 2001 - ₱97,999,363.41
- c. Late Payment Penalties for 2001 - ₱4,670,630.18.<sup>6</sup>

On April 6, 2004, First Gas filed its Preliminary Reply to the *PAN*.<sup>7</sup> Then on September 6, 2004, it received Final Assessment Notices (*FAN*) and Formal Letters of Demand all dated July 19, 2004, wherein it was assessed for the following deficiency taxes and penalties for the taxable years 2000 and 2001:

- a. Deficiency Income Tax for 2000    ₱37,099,915.29
- b. Deficiency Income Tax for 2001    ₱82,365,799.90
- c. Late Payment Penalties for 2001    ₱4,670,630.18.<sup>8</sup>

For the calendar year ending December 31, 2000, First Gas was assessed deficiency income tax for its unreported income on pre-income tax holiday sale of electricity to Meralco and Siemens, as well as for its alleged unreported interest income from foreign investments and dollar loan proceeds realized prior to commercial operations.<sup>9</sup>

For the calendar year ending in December 31, 2001, First Gas was also assessed deficiency income tax for its disallowed interest expense from dollar deposits in foreign banks and its disallowed compensation expense.<sup>10</sup>

Further, First Gas was assessed penalties for the calendar year ending December 31, 2001 due to the late payment of withholding tax on interest on foreign loans and the late payment of excise tax on natural gas.<sup>11</sup>

Meanwhile, the record shows that First Gas, represented by Nestor H. Vasay, and the BIR, represented by Celia C. King executed three (3) Waivers

<sup>4</sup> *Id.* at 76.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 77.

<sup>11</sup> *Id.*

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of the Defense of Prescription under the Statue of Limitations, the summary of which are as follows:

Waiver	Date of Waiver	Period Extended	Person Who Signed the Waiver
First <sup>12</sup>	April 12, 2004	June 15, 2004	Celia C. King
Second <sup>13</sup>	June 14, 2004	August 15, 2004	Celia C. King
Third <sup>14</sup>	August 13, 2004	October 15, 2004	Celia C. King

On October 5, 2004, First Gas filed a Letter of Protest before respondent which was not acted upon.<sup>15</sup> Thus, on June 30, 2005, it filed a Petition for Review before the CTA to assail the FAN and Formal Letters of Demand, all dated July 19, 2004.<sup>16</sup>

In a Decision<sup>17</sup> dated September 24, 2012, the CTA Third Division granted the petition of First Gas, the dispositive portion of which reads:

**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the following are hereby **CANCELLED** and **WITHDRAWN**:

1. Final Assessment Notice and Formal Letter of Demand for deficiency income tax for Calendar Year ended December 31, 2000 in the total amount of Php37,099,915.29 inclusive of surcharge, interest and compromise penalties;

2. Final Assessment Notice and Formal Letter of Demand for deficiency income tax for Calendar Year ended December 31, 2001 in the total amount of Php82,365,799.90 inclusive of surcharge, interest and compromise penalties; and

3. Final Assessment Notice and Formal Letter of Demand for penalties assessment for Calendar Year ended December 31, 2001 in the total amount of Php4,670,630.18 inclusive of surcharge, interest and compromise penalties.

**SO ORDERED.**<sup>18</sup> (Emphasis in the original)

The BIR moved for the reconsideration of the aforesaid Decision, which was denied in a Resolution<sup>19</sup> dated December 13, 2012.

This prompted the BIR to file a Petition for Review with the CTA *En Banc*. Then, in a Decision<sup>20</sup> dated May 12, 2014, the CTA *En Banc* denied the petition, disposing as follows:

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 77

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 74-86.

<sup>18</sup> *Id.* at 84-85.)

<sup>19</sup> *Id.* at 88-91.

<sup>20</sup> *Id.* at 55-67.

**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision and Resolution of the Third Division of this Court in CTA Case No. 7281 dated September 24, 2012 and December 13, 2012, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.<sup>21</sup>

On June 11, 2014, petitioner filed a Motion for Reconsideration of the Decision dated May 12, 2014 but the same was denied by the CTA *En Banc* in a Resolution<sup>22</sup> dated October 7, 2014.

Hence, the instant petition.

### *Issue*

Whether the deficiency tax assessments for taxable years 2000 and 2001 issued by petitioner against respondent are valid.

### *Our Ruling*

In the assailed Decision, the CTA *En Banc* affirmed the cancellation of the FAN and Formal Letters of Demand, all dated July 19, 2004, issued by petitioner against respondent for deficiency income taxes and penalties for the taxable years 2000 and 2001 because they were all found to be invalid.<sup>23</sup>

According to the CTA, the period to assess respondent for deficiency income tax for taxable year 2000 has already prescribed because the Waivers issued to extend the period to assess were not valid, finding the dates of acceptance by petitioner were not indicated in the Waivers. Thus, the FAN and the Formal Letter of Demand, which assessed respondent for deficiency income tax for the taxable year 2000 are invalid because they were issued beyond the three-year prescriptive period.<sup>24</sup>

The CTA also found that the FAN and the Formal Letter of Demand, which assessed respondent for deficiency income tax for the taxable year 2001 are also not valid because the assessments did not indicate therein a specific date or period within which the tax liabilities shall be paid by respondent.<sup>25</sup>

In the instant Petition, petitioner contends otherwise.

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<sup>21</sup> *Id.* at 66. (Emphasis in the original)

<sup>22</sup> *Id.* at 69-72.

<sup>23</sup> *Id.* at 65.

<sup>24</sup> *Id.* at 59-63.

<sup>25</sup> *Id.* at 65-66.

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According to petitioner, the absence of the dates of acceptance in the Waivers was simply due to inadvertence or oversight on the part of the person who received the same.<sup>26</sup> It argues that the inadvertence is not a fatal error that will invalidate the Waivers.<sup>27</sup> It also submits that it can be presumed that the date of acceptance of the Waivers by petitioner should be the date of notarization since that would be the time when the Waivers would become public instruments and be binding against other persons or entities, aside from the one which executed the same.<sup>28</sup> Petitioner also asserts that the Waivers were signed and accepted by the authorized official of petitioner before the expiration of the period of prescription, or before the lapse of the period agreed upon in the case of the subsequent Waivers.<sup>29</sup>

Petitioner further contends that respondent is now estopped from assailing the validity of the Waivers because it was respondent that requested for the execution and signing of the said Waivers.<sup>30</sup> Petitioner also contends that respondent should not be allowed to raise the issue of prescription for the first time on appeal before the CTA because it did not raise the same issue on the administrative level.<sup>31</sup>

With regard to the FAN and the Formal Letter of Demand, which assessed respondent for deficiency income tax for the taxable year 2001, petitioner contends that a notice of assessment need not state a date therein.<sup>32</sup> Petitioner argues that in order to be valid, the only requirement is that a notice of assessment shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based.<sup>33</sup> Thus, petitioner contends that the date of payment is not material to validate the notice of assessment.<sup>34</sup> According to petitioner, for as long as the date can be verified on the face of the notice of assessment or the formal letter of demand, then such would already suffice to determine when the tax deficiency should be payable.<sup>35</sup>

The Court will resolve first the validity of the FAN and the Formal Letter of Demand for taxable year 2000.

The Court agrees with the CTA that the Waivers were defective; thus, petitioner's period to issue the FAN and the Formal Letter of Demand for taxable year 2000 has already prescribed.

The period of limitation in the assessment and collection of taxes is governed by Section 203 of the National Internal Revenue Code (NIRC), which provides:

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<sup>26</sup> *Id.* at 20.  
<sup>27</sup> *Id.*  
<sup>28</sup> *Id.*, at 21-22.  
<sup>29</sup> *Id.* at 22.  
<sup>30</sup> *Id.* at 27.  
<sup>31</sup> *Id.* at 33.  
<sup>32</sup> *Id.* at 38.  
<sup>33</sup> *Id.*  
<sup>34</sup> *Id.* at 39.  
<sup>35</sup> *Id.*

SEC. 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.

Meanwhile, Section 222(b) of the 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,<sup>36</sup> thus:

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

x x x

(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.

In this case, the records show that respondent filed two (2) Income Tax Returns (*ITR*) for taxable year 2000. The first *ITR* was filed on October 16, 2000 for the fiscal year ending on June 30, 2000, and the second *ITR* was filed on April 16, 2001 for the calendar year ending on December 31, 2000. According to respondent, this was due to the change in its accounting period from fiscal year to calendar year. Thus, in accordance with Section 203 of the NIRC, petitioner had until October 16, 2003 and April 16, 2004 within which to assess respondent for deficiency income tax for taxable year 2000.

The record likewise reflect that respondent received the FAN and the Formal Letter of Demand, all dated July 19, 2004, for taxable year 2000 only on September 6, 2004, which is clearly beyond the three-year prescriptive period provided under Section 203 of the NIRC.

Petitioner, however, contends that the prescription had not set in because the parties executed three (3) Waivers, as follows:

Waiver	Date of Waiver	Period Extended	Person Who Signed the Waiver
First <sup>37</sup>	April 12, 2004	June 15, 2004	Celia C. King

<sup>36</sup> *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, 807 Phil. 912, 928 (2017).  
<sup>37</sup> *Rollo*, p. 20.

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Second <sup>38</sup>	June 14, 2004	August 15, 2004	Celia C. King
Third <sup>39</sup>	August 13, 2004	October 15, 2004	Celia C. King

As shown above, the Waivers appear to have extended the period to assess respondent for taxable year 2000 until October 15, 2004.

The Court agrees with the CTA that the Waivers are defective because the date of acceptance by petitioner is not indicated therein.

In the case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*,<sup>40</sup> (*Kudos Metal* case) the Court laid down the requirements for the proper execution of waiver, to wit:

Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after \_\_\_\_\_ 19 \_\_\_\_", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

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

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> 634 Phil. 314 (2010).

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.<sup>41</sup>

As shown in the foregoing, RMO 20-90 and RDAO 05-01 clearly mandate that the date of acceptance by the BIR should be indicated in the waiver. In the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*,<sup>42</sup> (*Standard Chartered Bank* case) this Court ruled that the provisions of the RMO and RDAO are mandatory and require strict compliance, hence, the failure to comply with any of the requisites renders a waiver defective and ineffectual.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,<sup>43</sup> this Court discussed the importance of the date of acceptance in a waiver, to wit:

**The other defect noted in this case is the date of acceptance which makes it difficult to fix with certainty if the waiver was actually agreed before the expiration of the three-year prescriptive period.** The Court of Appeals held that the date of the execution of the waiver on September 22, 1997 could reasonably be understood as the same date of acceptance by the BIR. Petitioner points out however that Revenue District Officer Sarmiento could not have accepted the waiver yet because she was not the Revenue District Officer of RDO No. 33 on such date. Ms. Sarmiento's transfer and assignment to RDO No. 33 was only signed by the BIR Commissioner on January 16, 1998 as shown by the Revenue Travel Assignment Order No. 14-98. The Court of Tax Appeals noted in its decision that it is unlikely as well that Ms. Sarmiento made the acceptance on January 16, 1998 because "Revenue Officials normally have to conduct first an inventory of their pending papers and property responsibilities."<sup>44</sup>

In *Commissioner of Internal Revenue v. FMF Development Corporation*,<sup>45</sup> the waiver was likewise found defective, and thus, did not validly extend the original three-year prescriptive period because it did not contain the date of acceptance by the CIR. This Court said that this is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period, thus:

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than ₱1 million, and the period to assess is not yet about to prescribe. **Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period.** Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.<sup>46</sup>

<sup>41</sup> *Id.* at 323-326. (Emphasis supplied; citations omitted)

<sup>42</sup> 765 Phil. 102 (2015).

<sup>43</sup> 488 Phil. 218 (2004).

<sup>44</sup> *Id.* at 234. (Emphasis supplied)

<sup>45</sup> 579 Phil. 174 (2008).

<sup>46</sup> *Id.* at 185.



In subsequent cases, this Court has consistently upheld the importance of the date of acceptance in waivers to validly extend the three-year period to assess the deficiency. In *Kudos Metal*, the waivers were also found to be defective for the following reasons:

A perusal of the waivers executed by respondent's accountant reveals the following infirmities:

1. The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent.
- 2. The waivers failed to indicate the date of acceptance.**
3. The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.

Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.<sup>47</sup>

In *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Inc.*,<sup>48</sup> this Court nullified the waivers based on the following:

The resolution of the main issue requires a factual determination of the proper execution of the Waiver. The CTA Division has already made a factual finding on the infirmities of the Waiver executed by respondent on 16 November 1993. **The Court found that the following requisites were absent:**

- (1) Conformity of either petitioner or a duly authorized representative;
- (2) Date of acceptance showing that both parties had agreed on the Waiver before the expiration of the prescriptive period; and**
- (3) Proof that respondent was furnished a copy of the Waiver.<sup>49</sup> (Emphasis supplied)

In the *Standard Chartered Bank* case, this Court also invalidated the waivers because the date of acceptance was not indicated therein, to wit:

Applying the rules and rulings, the waivers in question were defective and did not validly extend the original three-year prescriptive period. As correctly found by the CTA in Division, and affirmed *in toto* by the CTA En Banc, the subject waivers of the Statute of Limitations were in clear violation of RMO No. 20-90:

- 1) This case involves assessment amounting to more than ₱1,000,000.00. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR. A perusal of the First and Second Waivers of the Statute of Limitations shows that they were signed by Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad and Assistant Commissioner-Large Taxpayers Service Edwin

<sup>47</sup> *Commissioner of Internal Revenue v. Kudos*, *supra* note 34, at 326. (Emphasis supplied)

<sup>48</sup> 749 Phil. 280 (2014).

<sup>49</sup> *Id.* at 288.

R. Abella[,] respectively, and not by the Commissioner of Internal Revenue;

**2) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad of the First Waiver was not indicated therein;**

**3) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Edwin R. Abella of the Second Waiver was not indicated therein;**

4) The First and Second Waivers of Statute of Limitations did not specify the kind and amount of the tax due; and

5) The tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative failed to comply with the prescribed requirements of RMO No. 20-90. The subject waiver speaks of a request for extension of time within which to present additional documents, whereas the waiver provided under RMO No. 20-90 pertains to the approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case.<sup>50</sup> (Emphasis supplied)

Similarly in this case, the failure to indicate the date of acceptance by petitioner in the First Waiver means that the same is defective, and therefore, the original three-year prescriptive period to assess the deficiency income tax of respondent for the taxable year 2000 was never extended. Consequently, the two (2) subsequent waivers were also invalid because the original period was not extended and had already lapsed on April 16, 2004, and there was no period to extend anymore.

Petitioner's contention that the date of the notarization should be presumed as the date of acceptance is also untenable. The CTA correctly observed that "the date of notarization cannot be regarded as the date of acceptance for the same refers to different aspects, as the notary public is distinct from the Commissioner of [the] BIR who is authorized by law to accept Waivers of the Statute of Limitations."<sup>51</sup> Besides, it appears that petitioner's representative was not present during the notarization of the Waivers. As found by the CTA, only the representative from respondent, Vice-President Nestor H. Vasay, appeared before the notary public.<sup>52</sup>

Thus, the invalidity of the First Waiver and the subsequent waivers resulted to the non-extension of the three-year prescriptive period to assess respondent's deficiency income tax for the taxable year 2000. Accordingly, the FAN and the Formal Letter of Demand, which assessed respondent for deficiency income tax for the taxable year 2000 is invalid because it was issued beyond the three-year prescriptive period provided under Section 203 of the NIRC.

<sup>50</sup> *Supra* note 43, at 116-117.

<sup>51</sup> *Rollo*, p. 62.

<sup>52</sup> *Id.* at 63.

Petitioner's contention that respondent is now estopped from assailing the validity of the Waivers is also unavailing. In *Kudos Metal*, the Court ruled 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, which the BIR must strictly follow. Thus:

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 the 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.<sup>53</sup> (Citations omitted)

Meanwhile, petitioner's contention that respondent could not raise the issue of prescription for the first time on appeal has long been settled in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*.<sup>54</sup> Therein, it was only when the case ultimately reached this Court that the issue of prescription was brought up. Nevertheless, this Court ruled that the CIR could no longer collect the assessed tax due to prescription, thus:

We deny the right of the BIR to collect the assessed DST on the ground of prescription.

Section 1, Rule 9 of the Rules of Court expressly provides that:

Section 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by the statute of limitations, the court shall dismiss the claim.

If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. In *Heirs of Valientes v. Ramas*, we

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*Commissioner of Internal Revenue v. Kudos*, *supra* note 34, at 328-329.

<sup>54</sup>

738 Phil. 577 (2014).

ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.<sup>55</sup> (Emphasis supplied; citations omitted)

In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,<sup>56</sup> this Court categorically ruled that the Revised Rules of the CTA clearly allowed it to rule on issues not stipulated by the parties to achieve an orderly disposition of the case, thus:

On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

SECTION 1. *Rendition of judgment.* – x x x x

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.<sup>57</sup> (Citations omitted)

In view of the foregoing, the CTA correctly ruled on the issue of prescription even if it was only raised for the first time on appeal.

As regards the validity of the FAN and the Formal Letter of Demand for taxable year 2001, this Court also agrees with the ruling of the CTA that the same were not valid because they failed to indicate a definite due date for payment.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,<sup>58</sup> this Court held that a Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer, thus:

**Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention**

<sup>55</sup> *Id.* at 584-585.

<sup>56</sup> 813 Phil. 622 (2017).

<sup>57</sup> *Id.* at 638-639.

<sup>58</sup> 799 Phil. 391 (2016).

**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.<sup>59</sup> (Emphasis supplied; citations omitted)

Similarly, in this case, as pointed out by the CTA,<sup>60</sup> the last paragraph of each of the assessments stated the following:

In view thereof, you are requested to pay your aforesaid deficiency income tax liability/penalties through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.<sup>61</sup>

However, the due date in each of the FAN was left blank. Clearly, the FAN did not contain a definite due date and actual demand to pay. Accordingly, the FAN and the Formal Letter of Demand for taxable year 2001 are not valid assessments.

In sum, the CTA did not err in cancelling the FAN and the Formal Letters of Demand, all dated July 19, 2004. They are all invalid assessments because the period of petitioner to issue the same for taxable year 2000 has already prescribed, and the assessments for taxable year 2001 did not contain a definite due date for payment by respondent.

**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision of the Court of Tax Appeals *En Banc* dated May 12, 2014 in CTA EB No. 972 is **AFFIRMED**. Accordingly, the following are hereby **CANCELLED** and **WITHDRAWN**:

1. Final Assessment Notice and Formal Letter of Demand for deficiency income tax for Calendar Year ended December 31, 2000 in the total amount of ₱37,099,915.29 inclusive of surcharge, interest and compromise penalties;
2. Final Assessment Notice and Formal Letter of Demand for deficiency income tax for Calendar Year ended December 31,

<sup>59</sup> *Id.* at 418.

<sup>60</sup> *Rollo*, p. 83.

<sup>61</sup> Records, Exhibit "H", p. 548, and Exhibit "I", p. 866.




2001 in the total amount of ₱82,365,799.90 inclusive of surcharge, interest and compromise penalties; and

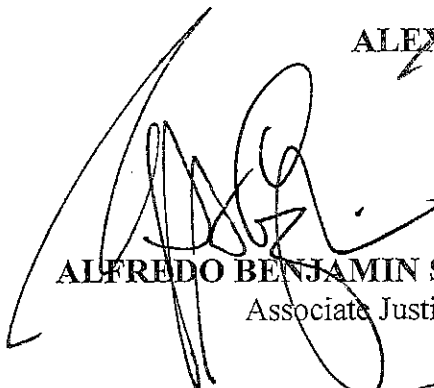
- 3. Final Assessment Notice and Formal Letter of Demand for penalties assessment for Calendar Year ended December 31, 2001 in the total amount of ₱4,670,630.18 inclusive of surcharge, interest and compromise penalties.


**SO ORDERED.**

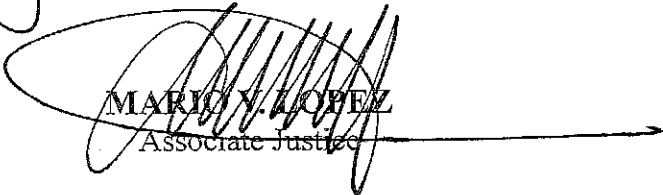
  
**JHOSEP V. LOPEZ**  
 Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
 Chief Justice  
 Chairperson


  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

  
**MARIO V. LOPEZ**  
 Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
 Chief Justice