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SECOND DIVISION

[G.R. No. 211289. January 14, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **LA FLOR DELA ISABELA, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; THE FAILURE OF THE COUNSEL TO INDICATE IN HIS/HER PLEADINGS THE NUMBER AND DATE OF ISSUE OF HIS/HER MANDATORY CONTINUING LEGAL EDUCATION (MCLE) CERTIFICATE OF COMPLIANCE WILL NO LONGER RESULT IN THE DISMISSAL OF THE CASE, AND EXPUNCTION OF THE PLEADINGS FROM THE RECORDS, BUT WILL SUBJECT THE LAWYER TO THE PRESCRIBED FINE AND/OR DISCIPLINARY ACTION.— In *People v. Arrojado*, the Court had already clarified that failure to indicate the number and date of issue of the counsel's MCLE compliance will no longer result in the dismissal of the case, to wit: In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an *En Banc* Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FAILURE TO NUMBER THE PARAGRAPHS DOES NOT JUSTIFY ITS OUTRIGHT

DISMISSAL; COURTS MUST STRIVE TO RESOLVE CASES ON THEIR MERITS, RATHER THAN SUMMARILY DISMISS THEM ON TECHNICALITIES, SPECIALLY WHEN THE ALLEGED PROCEDURAL RULES VIOLATED DO NOT PROVIDE ANY SANCTION AT ALL OR WHEN THE TRANSGRESSION THEREOF DOES NOT RESULT IN A DISMISSAL OF THE ACTION.— [E]ven La Flor recognizes that Section 2, Rule 7 of the Rules of Court does not provide for any punishment for failure to number the paragraphs in a pleading. In short, the perceived procedural irregularities in the petition for review on *certiorari* do not justify its outright dismissal. Procedural rules are in place to facilitate the adjudication of cases and avoid delay in the resolution of rival claims. In addition, courts must strive to resolve cases on their merits, rather than summarily dismiss them on technicalities. This is especially true when the alleged procedural rules violated do not provide any sanction at all or when the transgression thereof does not result in a dismissal of the action.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); WITHHOLDING TAX SYSTEM; WITHHOLDING TAXES ARE INTERNAL REVENUE TAXES COLLECTED BY WITHHOLDING AGENT FROM THE INCOME EARNED BY THE TAXPAYER/ PAYEE, AND REMITTED TO THE GOVERNMENT; THUS, COVERED BY SECTION 203 OF THE NIRC.— It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC. The CIR cites *National Development Company v. Commissioner of Internal Revenue* as basis that withholding taxes are only penalties imposed on the withholding agent x x x. A careful analysis of the x x x decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax

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and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.

4. **ID.; ID.; ID.; ID.; LIABILITY OF WITHHOLDING AGENT FOR FAILURE TO COLLECT AND REMIT TAXES; THE LIABILITY OF THE WITHHOLDING AGENT IS DISTINCT AND SEPARATE FROM THE TAX LIABILITY OF THE INCOME EARNER, SUCH THAT, THE WITHHOLDING AGENT SHALL BE LIABLE FOR DEFICIENCY TAXES AND APPLICABLE PENALTIES IF IT FAILS TO DEDUCT THE REQUIRED AMOUNT FROM ITS PAYMENT TO THE PAYEE.—** The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation* the Court explained: It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "*personally liable for such tax*" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.** x x x. Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation

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of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

5. ID.; ID.; ID.; ID.; ID.; THE "PENALTIES" IMPOSED UPON THE WITHHOLDING AGENT FOR FAILURE TO WITHHOLD AND REMIT INTERNAL REVENUE TAXES ARE AMOUNTS COLLECTED ON TOP OF THE DEFICIENCY TAX ASSESSMENTS INCLUDING DEFICIENCY WITHHOLDING TAX ASSESSMENTS.— Section 247(b) of the NIRC provides: SEC. 247. *General Provisions*. — x x x (b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein. On the other hand, Section 251 of the Tax Code reads: SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax*. — Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted. Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes.

6. ID.; ID.; PRESCRIPTIVE PERIOD FOR THE ASSESSMENT AND COLLECTION OF TAXES; WAIVERS EXTENDING THE PRESCRIPTIVE PERIOD OF TAX ASSESSMENTS MUST INDICATE THE SPECIFIC TAX INVOLVED AND THE EXACT AMOUNT OF THE TAX TO BE ASSESSED

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OR COLLECTED, AS THERE CAN BE NO TRUE AND VALID AGREEMENT BETWEEN THE TAXPAYER AND THE COMMISSIONER OF INTERNAL REVENUE (CIR) ABSENT THESE INFORMATION.—In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc*., the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit: **These requirements are mandatory and must strictly be followed.** x x x x x x. In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Ponferrada Orbe & Altubar Law Office for respondent.

D E C I S I O N

J. REYES, JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the September 30, 2013 Decision[1] and the February 10, 2014

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Roman G. del Rosario and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Pabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring; *rollo*, pp. 39-56.

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Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 951, which affirmed the August 3, 2012 Decision[3] and the October 5, 2012 Resolution of the CTA Third Division (CTA Division).

Factual background

Respondent La Flor dela Isabela, Inc. (La Flor) is a domestic corporation duly organized and existing under Philippine Law. It filed monthly returns for the Expanded Withholding Tax (EWT) and Withholding Tax on Compensation (WTC) for calendar year 2005.[4]

On September 3, 2008, La Flor, through its president, executed a Waiver of the Statute of Limitations (Waiver)[5] in connection with its internal revenue liabilities for the calendar year ending December 31, 2005. On February 16, 2009, it executed another Waiver[6] to extend the period of assessment until December 31, 2009.

On November 20, 2009, La Flor received a copy of the Preliminary Assessment Notice for deficiency taxes for the taxable year 2005. Meanwhile, on December 2, 2009, it executed another Waiver.[7]

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[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring. Presiding Justice Roman G. del Rosario with a Separate Concurring Opinion and Associate Justice Cielito N. Mindaro-Grulla, on leave; id. at 57-63.

[3] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas, concurring; *id*. at 76-101.

[4] *Id*. at 11.

[5] *Id*. at 72.

[6] *Id*. at 73.

[7] *Id*. at 74.

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On January 7, 2010, La Flor received the following Formal Letter of Demand and Final Assessment Notices (FANs): (1) LTEADI-II CP-05-00007 for penalties for late filing and payment of WTC; (2) LTADI-II CP 05-00008 for penalties for late filing and payment of EWT; (3) LTADI-II WE-05-00062 for deficiency assessment for EWT; and (4) LTEADI-II WC-05-00038 for deficiency assessment for WTC. The above-mentioned assessment notices were all dated December 17, 2009 and covered the deficiency taxes for the taxable year 2005.[8]

On January 15, 2010, La Flor filed its Letter of Protest contesting the assessment notices. On July 20, 2010, petitioner Commissioner of Internal Revenue (CIR) issued the Final Decision on Disputed Assessment (FDDA) involving the alleged deficiency withholding taxes in the aggregate amount of ₱6,835,994.76. Aggrieved, it filed a petition for review before the CTA Division.

CTA Division Decision

In its August 3, 2012 Decision, the CTA Division ruled in favor of La Flor and cancelled the deficiency tax assessments against it. It noted that based on the dates La Flor had filed its returns for EWT and WTC, the CIR had until February 15, 2008 to March 1, 2009 to issue an assessment pursuant to the three-year prescriptive period under Section 203 of the National Internal Revenue Code (NIRC). The CTA Division pointed out that the assessment was issued beyond the prescriptive period considering that the CIR issued the FANs only on December 17, 2009. Thus, it posited that the assessment was barred by prescription.

On the other hand, the CTA Division ruled that the Waivers entered into by the CIR and La Flor did not effectively extend the prescriptive period for the issuance of the tax assessments. It pointed out that only the February 16, 2009 Waiver was stipulated upon and the Waivers dated September 3, 2008 and December 2, 2009 were never presented or offered in evidence.

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[8] *Id*. at 12.

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In addition, the CTA Division highlighted that the Waiver dated February 16, 2009 did not comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 because it failed to state the nature and amount of the tax to be assessed.

Thus, it disposed:

> WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008, all dated December 17, 2009 are hereby CANCELLED and SET ASIDE.
>
> SO ORDERED.[9]

The CIR moved for reconsideration but it was denied by the CTA Division in its October 5, 2012 Resolution.[10] Undeterred, it filed a Petition for Review[11] before the CTA *En Banc*.

CTA En Banc Decision

In its September 30, 2013 Decision, the CTA *En Banc* affirmed the Decision of the CTA Division. The tax court agreed that the EWT and WTC assessments were barred by prescription. It explained that the Waivers dated September 3, 2008 and December 2, 2009 were inadmissible because they were never offered in evidence. The CTA *En Banc* added that these documents were neither incorporated in the records nor duly identified by testimony. It also elucidated that the Waiver dated February 16, 2009 was defective because it failed to comply with RMO No. 20-90 as it did not specify the kind and amount of tax involved. As such, the CTA *En Banc* concluded that the prescriptive period for the assessment of EWT and WTC for 2005 was not extended in view of the inadmissibility and

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[9] *Id.* at 99-100.

[10] Penned by Associate Justice Lovell R. Bautista, with Associate Justice Olga Palanca-Enriquez, concurring. Associate Justice Amelia R. Cotangco-Manalastas, on official leave; *id.* at 102-104.

[11] *Id.* at 105-130.

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invalidity of the Waivers between the CIR and La Flor. Thus, it disposed:

> WHEREFORE, premises considered, the assailed Decision dated August 3, 2012 and the Resolution dated October 5, 2012 are AFFIRMED. The Petition for Review is hereby DISMISSED.
>
> SO ORDERED.[12]

The CIR moved for reconsideration, but it was denied by the CTA *En Banc* in its February 10, 2014 Resolution.

Hence, this present petition raising the following:

Issues

I

WHETHER THE PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC APPLIES TO EWT AND WTC ASSESSMENTS; and

II

WHETHER LA FLOR'S EWT AND WTC ASSESSMENTS FOR 2005 WERE BARRED BY PRESCRIPTION.

The CIR argued that the prescriptive period under Section 203 of the NIRC does not apply to withholding agents such as La Flor. It explained that the amount collected from them is not the tax itself but rather a penalty. The CIR pointed out that the provision of Section 203 of the NIRC only mentions assessment of taxes as distinguished from assessment of penalties. It highlighted that La Flor was made liable for EWT and WTC deficiencies in its capacity as a withholding agent and not in its personality as a taxpayer.

On the other hand, the CIR maintained that even applying the periods set in Section 203 of the NIRC, the EWT and WTC assessment of La Flor had not yet prescribed. It pointed out that La Flor had executed three Waivers extending the

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[12] *Id.* at 55.

prescriptive period under the NIRC. The CIR lamented that the CTA erred in disregarding them because evidence not formally offered may be considered if they form part of the records. It noted that in the Answer it filed before the CTA Division, the subject Waivers were included as annexes. In addition, the CIR assailed that failure to comply with RMO No. 20-90 does not invalidate the Waivers.

In its Comment[13] dated August 15, 2014, La Flor countered that the CIR's petition for review should be denied outright for procedural infirmities. It pointed out that the petition failed to comply with Bar Matter (B.M.) No. 1922 because the date of issue of the Mandatory Continuing Legal Education (MCLE) compliance of the counsels of the CIR was not indicated. In addition, La Flor noted that the petition for review did not observe Section 2, Rule 7 of the Rules of Court requiring the paragraphs to be numbered. Further, it asserted that the assessment of the EWT and WTC had prescribed because it went beyond the prescriptive period provided under Section 203 of the NIRC. La Flor also assailed that the Waivers should not be considered because they were neither offered in evidence nor complied with the requirements under RMO No. 20-90.

In its Reply[14] dated February 18, 2015, the CIR brushed aside the allegations of procedural infirmities of its petition for review. It elucidated that failure to indicate the date of issue of the MCLE compliance is no longer a ground for dismissal and that it had stated the MCLE certificate compliance numbers of its counsels. The CIR posited that the Rules of Court does not penalize the failure to number the paragraphs in pleadings.

The Court's Ruling

Other than challenging the merits of the CIR's petition, La Flor believes that the former's petition for review on *certiorari* should be dismissed outright on procedural grounds. It points

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[13] *Id.* at 144-157.

[14] *Id.* at 170-173.

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out that failure to include the date of issue of the MCLE compliance number of a counsel in a pleading is a ground for dismissal. Further, La Flor highlights that the paragraphs in the CIR's petition for review on *certiorari* were not numbered.

In *People v. Arrojado*,[15] the Court had already clarified that failure to indicate the number and date of issue of the counsel's MCLE compliance will no longer result in the dismissal of the case, to wit:

> In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an *En Banc* Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.

On the other hand, even La Flor recognizes that Section 2, Rule 7 of the Rules of Court does not provide for any punishment for failure to number the paragraphs in a pleading. In short, the perceived procedural irregularities in the petition for review on *certiorari* do not justify its outright dismissal. Procedural rules are in place to facilitate the adjudication of cases and avoid delay in the resolution of rival claims.[16] In addition, courts must strive to resolve cases on their merits, rather than summarily dismiss them on technicalities.[17] This is especially true when the alleged procedural rules violated do not provide any sanction

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[15] 772 Phil. 440, 448-449 (2015).

[16] *Curammeng v. People*, 799 Phil. 575, 581 (2016).

[17] *Ching v. Cheng*, 745 Phil. 93, 117 (2014).

at all or when the transgression thereof does not result in a dismissal of the action.

Nevertheless, the Court finds no reason to reverse the CTA in invalidating the assessments against La Flor.

Withholding taxes are internal revenue taxes covered by Section 203 of the NIRC.

Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes, to wit:

> 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 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)

On the other hand, Section 222(a)[18] of the NIRC provides for instances where the ordinary prescriptive period of three years for the assessment and collection of taxes is extended to 10 years, *i.e.*, false return, fraudulent returns, or failure to file a return. In short, the relevant provisions in the NIRC concerning the prescriptive period for the assessment of internal revenue taxes provide for an ordinary and extraordinary period for assessment.

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[18] SEC. 222(a) – In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

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The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

In *Chamber of Real Estate and Builders' Associations, Inc. v. Hon. Executive Secretary Romulo*,[19] the Court had succinctly explained the withholding tax system observed in our jurisdiction, to wit:

> We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.[20]

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[19] 628 Phil. 508, 536 (2010).

[20] *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, 149 Phil. 155, 181 (2014).

As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent. In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[21] the Court elaborated:

> It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*, to wit:
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> > In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:
> >
> > > "the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer."

Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains

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[21] 672 Phil. 514, 528-529 (2011).

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with the taxpayer because the gain was realized and received by him. (Citations omitted)

It is true that withholding tax is a method of collecting tax in advance[22] and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee.[23] Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.

The CIR cites *National Development Company v. Commissioner of Internal Revenue*[24] as basis that withholding taxes are only penalties imposed on the withholding agent, to wit:

> The petitioner also forgets that it is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.
>
> In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code, thus:
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> > Section 53(c). *Return and Payment*. — Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the

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[22] *Filipinas Synthetic Fiber Corporation v. Court of Appeals*, 374 Phil. 835, 841 (1999).

[23] *Philippine National Bank v. Commissioner of Internal Revenue*, 562 Phil. 575, 582 (2007).

[24] 235 Phil. 477, 485-486 (1987).

provisions of this section. (As amended by Section 9, R.A. No. 2343.)

In *Philippine Guaranty Co. v. The Commissioner of Internal Revenue and the Court of Tax Appeals*, the Court quoted with approval the following regulation of the BIR on the responsibilities of withholding agents:

> In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of tax withheld. (2nd par., Sec. 200, Income Tax Regulations).
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> "Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed *strictissimi juris*."

The petitioner was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.

The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the

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withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*[25] the Court explained:

> It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "*personally liable for such tax*" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.**
>
> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as *not* "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him. (Emphasis supplied)

Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and

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[25] 281 Phil. 425, 441-442 (1991), as cited in *Commissioner of Internal Revenue v. Smart Communication, Inc.*, 643 Phil. 550, 561-562 (2010).

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independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

In addition, Section 247(b) of the NIRC provides:

SEC. 247. *General Provisions.* —

x x x x x x x x x

(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

On the other hand, Section 251 of the Tax Code reads:

SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* — Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Floras only for the purpose of imposing penalties and not for the collection of internal revenue taxes.

The CIR further argues that even if Section 203 of the NIRC was applicable, the assessments against La Flor had yet to prescribe. It points out that La Flor had executed three Waivers to extend the statutory prescriptive period. The CIR insists that the Waivers should have been considered even if they were not offered in evidence because the CTA is not strictly governed

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by technical rules of evidence. It adds that the requirements under RMO No. 20-90 are not mandatory.

In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[26] the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit:

> **These requirements are mandatory and must strictly be followed.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
>
> x x x x x x x x x
>
> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of 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 as required under RMO No. 20-90.
>
> Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
>
> x x x x x x x x x
>
> 3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **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. (Emphasis supplied)

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[26] G.R. No. 220835, July 26, 2017, 833 SCRA 285, 296-298.

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In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver.

WHEREFORE, the petition is **DENIED**. The September 30, 2013 Decision and the February 10, 2014 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 951 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ*., concur.

FIRST DIVISION

[G.R. No. 232060. January 14, 2019]

VIRGILIA T. AQUINO, NAZARIA T. AQUINO, AVELINA A. RONQUILLO, PATROCINIO T. AQUINO, AND RAMONCITO T. NEPOMUCENO, *petitioners, vs.* **ESTATE OF TOMAS B. AGUIRRE,** *respondent.*

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[*] Additional Member per S.O. No. 2630 dated December 18, 2018.