REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

LORENZO SHIPPING CORPORATION, *Petitioner,*	**CTA CASE NO. 8694**
-versus-	**Members:** **BAUTISTA,** Chairperson; **FABON-VICTORINO,** **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	**Promulgated:** JUN 28 2018 4:20 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This Petition for Review prays for the cancellation of the deficiency tax assessment in the aggregate amount of Two Billion, Eight Million, Four Hundred Seventy Two Thousand, Five Hundred Eighty Four and 91/100 Pesos (Php2,008,472,584.91), inclusive of interest, surcharges and compromise penalties for taxable year ("TY") 2008, as contained in the undated Final Assessment Notice ("FAN") and undated Audit Result/Assessment Notices issued by Mr. Alfredo V. Misajon, OIC-Assistant Commissioner, Large Taxpayers Service, Regular Large Taxpayers Audit Division I, which was received on April 18, 2013.[1]

The Facts

Petitioner Lorenzo Shipping Corporation is a domestic corporate entity organized and existing under the laws of the Rupublic of the Philippines with

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1 Docket, Joint Stipulation of Facts and Issues ("JSFI"), Joint Stipulations of Facts, par. 8, p. 1098.

principal office address at 20F Times Plaza Building, United Nations Avenue corner Taft Avenue, Ermita, Manila.[2]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to act upon and render final decisions on protests filed against internal revenue tax assessments, and other matters arising under National Internal Revenue Code or other laws administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On May 27, 2009, a Letter of Authority No. 2007-00049470 evenly dated was issued by Zenaida Garcia, OIC-ACIR, Large Taxpayers Service of the BIR[4] for the examination of its books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2008 to December 31, 2008.[5]

On June 23, 2010, Petitioner received a Notice of Informal Conference dated June 17, 2010, issued by Mr. Rey Asterio L. Tambis, Head Revenue Executive Assistant, Large Taxpayers Service – Regular.[6]

On March 06, 2013, Petitioner received from Respondent an undated Preliminary Assessment Notice ("PAN"), assessing Petitioner for deficiency income tax, value-added tax ("VAT"), withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), fringe benefits tax ("FBT"), and documentary stamp tax ("DST"), inclusive of interest and compromise penalty in the amounts of Php1,480,082,550.48, Php420,882,135.71, Php22,521,583.43, Php43,707,236.86, Php15,751,331.62, and Php1,989,950,674.28, respectively.[7]

Subsequently, Petitioner and Respondent allegedly executed Waivers of Statute of Limitations on March 31, 2011[8], on October 08, 2011[9] and on June 29, 2012[10].

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2 Docket, Petition for Review, Parties, par. 1, p. 14.
3 *Id.,* Pre-Trial Order, Facts, par. 1, p. 1111.
4 *Id.,* JSFI, Joint Stipulations of Facts, par. 3, p. 1097.
5 *Id.,* Letter of Authority, Exhibit "P-13", p. 1248.
6 *Id.,* JSFI, Joint Stipulations of Facts, par. 4, pp. 1097 to 1098.
7 *Id.,* Preliminary Assessment Notice, Exhibit "P-12", pp. 1235 to 1247; BIR Records, Exhibit "R-3-Merit", pp. 1028 to 139.
8 BIR Records, Exhibit "R-9-Merit", p. 255.
9 Docket, Waiver of Statute of Limitations dated October 08, 2011, Exhibit "P-8", p. 1223; BIR Records, Exhibit "R-10-Merit", p. 257.
10 *Id.,* Waiver of Statute of Limitations dated June 29, 2012, Exhibit "P-9", p. 1224; BIR Records, Exhibit "R-11-Merit", p. 1001.

On April 18, 2013, Petitioner received from Respondent an undated FAN and undated Audit Result/Assessment Notices assessing Petitioner for alleged deficiency income tax, VAT, WTC, EWT, FBT, and DST, inclusive of surcharges, interest and compromise penalty, broken down as follows:[11]

Nature of Deficiency	Amount
Income Tax	Php 1,493,935,124.39
Value-Added Tax (VAT)	424,740,697.17
Withholding Tax on Compensation (WTC)	22,727,015.18
Expanded Withholding Tax (EWT)	44,105,756.98
Fringe Benefits Tax (FBT)	15,894,659.44
Documentary Stamp Tax (DST)	7,069,331.75
TOTAL	**Php 2,008,472,584.91**

As a result, Petitioner filed a protest to the FAN dated May 17, 2013[12] allegedly on the same day *via* registered mail.[13]

Thereafter, on June 26, 2013, Petitioner received from Respondent through Mr. Alfredo V. Misajon, a Preliminary Collection Letter dated June 21, 2013.[14]

In response, on July 04, 2013, Petitioner filed with the Office of Mr. Alfredo V. Misajon a Letter Reply dated July 02, 2013.[15]

On July 15, 2013[16], Petitioner received from Respondent a letter dated July 12, 2013 denying its protest.[17]

Consequently, Petitioner filed the instant Petition for Review[18] on August 13, 2013 with a prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction. In support thereof, Petitioner presented its witness Ms. Edna F. Valenzuela during the September 05, 2013 hearing.[19]

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[11] Docket, JSFI, Joint Stipulations of Facts, par. 8, p. 1098; Formal Assessment Notice, Exhibit "P-2", pp. 1175 to 1192; BIR Records, Exhibits "R-4-Merit", "R-4-a-Merit", "R-4-b-Merit", "R-4-c-Merit", "R-4-d-Merit", "R-4-e-Merit" and "R-4-f-Merit", pp. 1046 to 1063.

[12] *Id.*, Protest to the Formal Assessment Notice, Exhibit "P-4", pp. 1193 to 1217.

[13] *Id.*, Registry Receipt attached to the Protest to the Formal Assessment Notice, Exhibit "P-5", p. 1193.

[14] *Id.*, JSFI, Joint Stipulations of Facts, par. 6, p. 1098.

[15] *Id.*, JSFI, Joint Stipulations of Facts, par. 7, p. 1098.

[16] *Id.*, Reply Letter dated August 12, 2013 to the Letter dated July 12, 2013, Exhibit "P-7", pp. 1220 to 1221.

[17] *Id.*, Letter dated July 12, 2013, Exhibit "P-6", pp. 1218 to 1219.

[18] *Id.*, pp. 14 to 57.

[19] *Id.*, September 05, 2013 Minutes of Hearing, p. 227.

On September 09, 2013, the Court in a Resolution[20] granted the suspension of collection of deficiency taxes of Petitioner for TY 2008. Petitioner then posted a surety bond.

In the Answer[21] filed on April 8, 2015 *via* registered mail, Respondent interposed the following special and affirmative defenses:

> "**WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION. THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.**
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> 6. Respondent respectfully submits that this Honorable Court has no jurisdiction to take cognizance of the present petition considering that the assessment had become final, executory, and demandable due to petitioner's failure to interpose a valid and timely protest. Section 228 of the National Internal Revenue Code of 1997 (hereinafter, 'NIRC') sets the period within which a taxpayer may contest an assessment in the administrative level, to wit:
>
>> 'xxx xxx xxx
>>
>> **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 manners 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.***

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20 Docket, pp. 396 to 401.

21 *Id.*, pp. 838 to 865.

> xxx xxx xxx' (Emphases and underscoring supplied)

7. Such manner of interposing an administrative protest are further treshed out and provided for in Section 3.1.5 of Revenue Regulation No. 12-99 (hereinafter, 'RR 12-99'), which sets forth as follows:

> '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.***
>
> xxx xxx xxx
>
> ***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 faild 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.***' (emphases and underscoring supplied)

8. Petitioner received the Formal Assessment Notice (hereinafter, 'FAN') on 18 April 2013. Therefore, it had thirty (30) days from 18 April 2013, or until 18 May 2013, within which to file its administrative protest.

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9. Petitioner allegedly filed a letter of protest through registered mail on 17 May 2013.

10. However, respondent received said letter only on 4 July 2013. Verification with the Muntinlupa Central Post Office (MCPO) showed that said letter was actually posted and dispatched by the same Post Office under Registered Letter 5281 only on 19 June 2013 or more than thirty days from 18 April 2013.

11. Given that petitioner belatedly protested the assessment against it, respondent earnestly maintains that petitioner failed to comply with the statutory mandate in section 228 of the NIRC, and effectively prevented this Honorable Court from assuming jurisdiction over this petition. To be more precise, respondent points out that petitioner's failure to file its administrative protest on time, and to thoroughly apply the administrative remedy available to it, ultimately rendered the assessment against it as final, executory and demandable.

12. Respondent humbly contends that once the assessment attained finality, it had become immutable and absolute. Respondent also adds that this Honorable Court may no longer modify the same, in any respect.

13. Consequently, through a Letter dated 12 July 2013, respondent ruled:

> 'Evidently, the letter protest was filed beyond the thirty (30)-day prescribed period which thereby makes our assessment final, executory and demandable.
>
> Accordingly, your protest against our Formal Letter of demand and assessment Notice is denied for being filed late.'

14. However, petitioner erroneously considered respondent's Letter dated 12 July 2013 as a 'decision' which gave it thirty days within which to file the instant Petition for Review before this Honorable Court pursuant to Section 228 of the NIRC.

15. Respondent earnestly maintains that no such decision, as contemplated under Sections 7(a) and 11 of Republic Act No. 1125, was ever rendered, by the Commissioner of Internal Revenue or otherwise, since the deficiency tax assessment remained undisputed because petitioner failed to interpose a timely administrative protest thereto.

16. Therefore, respondent respectfully submits that there is no decision over which this Honorable Court can exercise its executive appellate jurisdiction.

17. The issuance of the *Letter dated 12 July 2013* cannot be the reckoning point of the petition because it was not a 'decision' on the merits of petitioner's case. If it will be otherwise, it is as if respondent unintentionally gave petitioner a chance to circumvent the rule laid down by Section 228 of the NIRC.

18. Respondent respectfully reiterated that the assessment had already become final, executory, and demandable at this juncture, and that it was already too late for petitioner to contest the assessment against it.

19. Due to their failure to file a timely protest against the FAN, petitioner seems to attempt to save its cause by filing the present petition under the guise of questioning the validity of the assessments on the gorund of prescription. Petitioner alleges that this issue of prescription is duly encompassed or included in the term 'other matters' over which the Honorable Court of Tax Appeals has appellate jurisdiction.

20. Petitioner invokes the jurisdiction of the Honorable Court by anchoring its claim to Section 7(a) of Republic Act No. 1125, as amended by Republic Act No. 3457 and further amended by R.A. no. 9282 and R.A. 9503, the pertinent part of which is:

> Sec. 7. Jurisdiction. The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,

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> refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
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> xxxxxxxxxx

21. Petitioner emphasized this specific part of the above-stated section: *'other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue'* to justify their claim of the Honorable Court's jurisdiction. Petitioner's interpretation of Section 7 of RA No. 1125 is rather misplaced. Their allegation that the appellate jurisdiction of the CTA covers their position lacks legal and factual basis. To take this in isolation would be a clear misreading of the above stated section.

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22. The emphasized portion of the cited jurisprudence clearly dictates that the 'other matters' contemplated therein must also be directly related to the disputed assessment. It cannot be taken in isolation to invoke the specialized jurisdiction of the Honorable Court.

23. It is worthy to note that the enumeration in Section 7(a) of Republic Act No. 1125 clearly provides that the exclusive appellate jurisdiction of the Court of Tax Appeals involves **decisions** of the Commissioner of Internal Revenue, Regional Trial Courts, Commissioner of Customs, Central Board of Assessment Appeals, Secretary of Finance and Secretary fo Trade and Industry.

24. As discussed above, respondent reiterates that its Letter dated 12 July 2013 does **not** involve a *decision* of the respondent.

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26. Respondent also respectfully submits that petitioner should be considered as to have failed to make use of the

administrative remedy available to it. The law provides that such non-availment, or as in this case, a belated availment, removes the taxpayer's right to judicial relief. Even if the taxpayer attempts to seek judicial relief, the non-availment or belated availment also serves to bar this Honorable Court from assuming jurisdiction over the action initiated by the taxpayer.

27. In view of petitioner's actual failure to timely file its administrative protest, the intendment of the law, in prescribing that the taxpayer comply with all the administrative requirements continuing up to judicial review, was not served. Otherwise stated, petitioner did not exhaust its administrative remedies.

28. Respondent respectfully submits that the requirement to exhaust administrative remedites is not satisfied with the mere filing of an administrative protest. Rather, respondent contends that an administrative remedy shall only be deemed to have been exhausted if the same had been thoroughly applied. Which was not happened in this case. In this case, petitioner filed its protest beyond the thirty (30) – day period within which to do so, and did not submit all documents which may be relevant or important in substantiating its protest. Such being the case, petitioner's recourse to judicial action merely becomes an attempt by it to circumvent the administrative protest and bypass respondent's office.

29. In support of [his] position, respondent respectfully invites the attention of this Honorable Court to the case of **Jesus A. Jariol v. Commission on Elections**, wherein the honorable Supreme Court made the following pronouncement:

> 'xxx xxx xxx.
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> A party aggrieved thereby must not merely initiate the prescribed administrative procedure to obtain relief, but also must pursue it to its's a *[sic]* appropriate conclusion before seeking jusidicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court[.]
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> xxx xxx xxx[.]'

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30. Petitioner bypassed its administrative remedy, and it is only now at the judicial stage, before this Honorable Court, that petitioner interposes its protest. Respondent respectfully submits that this should not be allowed as this pernicious practice contravenes the well-settled principle that matters not preliminarily raised in the administrative level cannot be raised for the first time upon judicial appeal.

31. The concept and consequences of the non-exhaustion of administrative remedies need not be discussed in detail. Suffice it to say that the Honorabel Supreme Court has long and consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide upon a mater that comes within his or her jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

32. Applying the foregoing juriprudential guidelines to the case at hand, respondent respectfully maintains that petitioner's non-exhaustion of its administrative remedies should bar it from seeking judicial recourse. Its failure to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of practicality and formality, but is also jurisdictional in nature.

33. Hence, petitioner's failures, firstly, in failing to interpose a timely protest against the FAN issued against it, and secondly, in not submitting the complete documents necessary to substantiate its claim, warrant a dismissal of its petition.

34. Finally, assuming the Honorable Court has jurisdiction, respondent submits the succeeding arguments in support of the assessment.

RESPONDENT'S RIGHT TO ASSESS DID NOT PRESCRIBE.

35. The right of respondent to assess petitioner for deficiency taxes has not prescribed.

36. Petitioner primarily anchors its claim on Sections 203, 222 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended[.]

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37. Contrary to petitioner's claim, the right of respondent to assess petitioner's deficiency VAT liabilities for calendar year 2006 did not prescribe in view of petitioner's execution of three (3) Waiver of the Statute of Limitations under the NIRC of 1997, as amended, ('waiver' for brevity), which extended the period od assessment, to wit:

Waiver	Date Executed	Extended Assessment Period Until
1st Waiver	March 31, 2011	December 31, 2011
2nd Waiver	October 8, 2011	June 30, 2012
3rd Waiver	June 29, 2012	June 30, 2013

38. Having executed a waiver **before** the expiration of the ordinary prescriptive period for assessment, petitioner cannot bank on its issue of prescription.

39. Petitioner alleges that petitioner's records do not show any explicit written authority in favor of the waiver signatory to waive the defense of prescription under the Tax Code for calendar year 2008.

40. Assuming for the sake of argument that petitioner's Board did not authorize anyone to waive its rights under the Statute of Limitations, the Honorable Supreme Court in the case of **People's Aircargo and Warehousing co *[sic]*, Inc. vs. Court of Appeals and Stefani Sano** made it explicit that it is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped form denying the agent's authority.

41. In the case at hand, three waivers were executed by no less than petitioner's Budget and Financial Reporting Manager. The

petitioner cannot allege that its manager was not authorized to execute the waivers nor that the petitioner is not bound by the acts of its manager.

42. What is more, petitioner is estopped from assailing the validity of the waiver/s. A perusal of the BIR Records will show that petitioner only raised the issue of validity of the waiver/s only after the issuance of the FAN. It is ironic for them to question such documents that they themselves signed and used for this assessment process. It will be utterly unfair to put weight on petitioner's afterthought since it will be able to defeat the validity of the very same thing that it utilized for its own advantage as, through which, it was able to submit additional documents that enabled them to reverse some discrepancies found out after audit.

43. Deriving benefit from the waivers executed at its instance constitutes estoppel. In *'Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue'*, the Supreme Court had the occasion to say:

> *'**Petitioner is estopped from questioning the validity of the waivers***
>
> **<u>RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR</u>**, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code. RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.
>
> The Court disagrees.
>
> Under **<u>Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that 'an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the</u>**

> **person relying thereon**.' A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.
>
> Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. **To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.**" (Emphasis and underscoring supplied)

44. Article 1431 of the New Civil Code is quite instructive in providing that an admission or representation is rendered conclusive upon the person making it and cannot be denied against the person relying upon it. As the Supreme Court opined in one case: 'Petitioner, having performed affirmative acts upon which the respondents based their subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. To allow him to do so would be tantamount to conferring upon him the libery to limit his liability at his whim and caprice, which is against the very principles of equity and natural justice as abovestated.

45. In the case of **Philippine Journalists, Inc. (PJI) vs. Commissioner of Internal Revenue** the Supreme Court held:

> "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."

46. The very soul of the doctrine enunciated in the PJI case is that the waiver of the Statute of Limitations can never be used as an instrument of malice. However, respondent would like to point out that this doctrine was never meant to favor one party over another where both were at fault.

47. 'A party cannot, in the course of litigation or in dealings in pais, be permitted to repudiate his representations, or occupy inconsistent positions, or in the letter of Scotch law, to approbate or reprobate.'

48. Therefore, the waiver(s) executed by petitioner are valid, thus extending respondent's period to assess petitioner until June 30, 2013.

49. The FAN for calendar year 2008 were *[sic]* issued on 18 April 2013. Foregoing considered, due to the valid execution of the waiver for calendar year 2008, it can be manifest that the right of respondent to assess petitioner did not prescribe. The FAN for calendar year 2008 were *[sic]* validly issued in accordance with law.

[PETITIONER] SLEPT ON ITS RIGHTS. ITS FAILURE TO TIMELY ASSERT ITS CLAIM THAT THE WAIVERS ARE INVALID

RENDERS A LATER INVOCATION BARRED BY LACHES

50. Laches has been defined as **the failure of or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it.** Thus, the doctrine of laches presumes that the party guilty of negligence had the opportunity to do what should have been done, but failed to do so. Conversely, if the said party did not have the occasion to assert the right, then, he can not be adjudged guilty of laches. **Laches is not concerned with the mere lapse of time, rather, the party must have been afforded an opportunity to pursue his claim in order that the delay may sufficiently constitute laches.** (Emphasis supplied)

51. It is humbly submitted that petitioner's right to question the validity of the subject wiavers accrued from the very moment it saw the infirmities of the First Wavier executed on **31 March 2011**. And when a Second and/or Third Waiver was about to be excuted, it should have raised its argument against the validity of the First Waiver. However, [petitioner] did not choose to do so and went on with execution of the Second and Third waiver.

52. Hence, respondent insists that the following factual circumstances are enough to be considered as implied admission of the validity of the subject waivers:

a) Petitioner only raised the issue of validity of the waiver/s after the issuance of FAN, or after **18 April 2013**, which is more or less four years of actively participating in the assessment process;

b) Petitioner executed a Second and Third Waiver through one and the same representative/employee who executed the 1st waiver;

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53. Respondent maintains its contention that petitioner is estopped from assailing the validity of the waiver/s. A perusal of the BIR Records will show that petitioner only raised the issue of validity of the waiver/s after **more or less four years** of actively participating in the assessment process. It is as if petitioner led respondent to believe that its right to assess has not yet prescribed and it can continue with its audit/examination, relying on the waivers executed by representatives/employees of petitioner.

RESPONDENT'S ASSESSMENT HAS BASIS BOTH IN FACT AND LAW AND WAS ISSUED IN ACCORDANCE WITH LAW, RULES AND JURISPRUDENCE.

54. Petitioner Lorenzo Shipping Corporation ('Lorenzo', for brevity) is liable to pay its deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefits tax and documentary stamp tax in the total amount of Two Billion Eight Million Four Hundred Seventy-Two Thousand Five Hundred Eighty-four and 90/100 Pesos (Php2,008,472,584.90) for the calendar year 2008.

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On September 10, 2015 Petitioner filed its Pre-Trial Brief[22]. While Respondent's Pre-Trial Brief[23] was filed on September 14, 2015.

The parties submitted their Joint Stipulation of Facts and Issues[24] on October 05, 2015. Consequently, the Court issued a Pre-Trial Order[25] on November 16, 2015.

During trial, Petitioner presented Ms. Edna F. Mendiola, Atty. Arsenio C. Cabrera, Jr. and Mr. Roberto S. Quiogue as its witnesses. Afterwards, Petitioner formally offered its documentary evidence as well as its testimonial evidence, which the Court all admitted *via* Resolutions dated July 14, 2016[26], September 09, 2016[27] and December 18, 2017[28].

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22 Docket, pp. 934 to 940.
23 *Id.*, pp. 1084 to 1090.
24 *Id.*, pp. 1097 to 1102.
25 *Id.*, pp. 934 to 940.
26 *Id.*, pp. 1312 to 1313.
27 *Id.*, pp. 1328 to 1329.
28 *Id.*, pp. 1468 to 1470.

On the other hand, Respondent presented his witnesses, Regional Director Alfredo V. Misajon, Division Chief Cesar D. Escalada, Major Melanio Layugan (Ret.) and Revenue Officer Gilquin B. Tolentino, and formally offered his documentary evidence; which were all admitted by the Court in the Resolutions dated March 05, 2015[29] and December 18, 2017[30], except for Exhibits "R-1" and "R-1-a" for failure to submit duly marked exhibits in the records corresponding to the formally offered exhibits.

In a Resolution[31], the Court declared the case deemed submitted for decision on March 21, 2018, considering the filing of Petitioner's Memorandum[32] on February 05, 2018 and Respondent's Memorandum[33] on February 12, 2018 *via* registered mail.

The Issues

The parties submitted the following issues[34] for the Court's determination:

1. Whether or not Petitioner is liable for the amount of Php2,008,472,584.91 representing deficiency taxes for TY 2008 comprising of income tax, VAT, WTC, EWT, FBT, DST, surcharges, interest and compromise penalty;

2. Whether or not Respondent's right to assess Petitioner for the alleged deficiency taxes for TY 2008 in the aggregate amount of Php2,008,472,584.90 has already prescribed;

3. Whether or not the FAN issued by Respondent is null and void for its failure to state a clear and unequivocal demand for payment of the computed tax liabilities within a prescribed period;

4. Whether or not the Honorable Court has jurisdiction over the case; and

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29 Docket, pp. 794 to 800.
30 *Id.*, pp. 1468 to 1470.
31 *Id.*, p. 1615.
32 *Id.*, pp. 1477 to 1530.
33 *Id.*, pp. 1574 to 1608.
34 *Id.*, JSFI, Issues, pp. 1098 to 1099.

5. Whether or not Revenue Memorandum Order No. 20-90 is an internal issuance.

Discussion/Ruling

The Court has jurisdiction over the present case.

The Court shall determine first the timeliness of the filing of the instant Petition for Review.

Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides:

> "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:
>
> xxx xxx xxx
>
> 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 <u>thirty (30)</u> 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 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."[35]

It is undisputed that Petitioner received the FAN on April 18, 2013.[36] Following the mandate of Section 228 of the NIRC of 1997 in relation to Revenue Regulation No. 12-99[37], Petitioner has until May 20, 2013 which is the next working day after May 18, 2013, within which to file its administrative protest.

After a careful perusal of the records of case, this Court finds that Petitioner indeed filed its administrative protest by registered mail on May 17, 2013, well within the 30-day period provided by law to file the same.

Section 3, Rule 13 of the Revised Rules of Court ("Revised ROC") provides the manner of filing pleadings and other documents, as follows:

> "**SEC. 3.** *Manner of filing.* The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court **or by sending them by registered mail**. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, <u>**the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit**</u>

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[35] *Emphasis and underscoring supplied.*

[36] Docket, JSFI, Joint Stipulations of Facts, par. 8, p. 1098.

[37] 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 <u>thirty (30)</u> 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.

<u>in court</u>. The envelope shall be attached to the record of the case."[38]

Based on the foregoing provision, if pleadings or other documents are filed *via* registered mail, then the date of mailing shall be considered as the date of filing. It does not matter when the court actually receives the mailed pleading.[39] Thus, in this case, as the administrative protest was filed by registered mail on May 17, 2013, well within the reglementary period provided by law, it is inconsequential that the same was actually received by Respondent on July 4, 2013, as stated in its Letter dated July 12, 2013.[40]

The date of filing of Petitioner by registered mail is evidenced by Registry Receipt No. 5821 bearing even date[41], the Certification of the Muntinlupa Central Post Office ("MCPO")[42], as well as the testimony[43] of Mr. Roberto S. Quiogue, former Postmaster of MCPO who issued said Certification. In *Alma B. Russel vs. Teofista Ebasan and Agapito Austria* [44], the Supreme Court determined that fact of mailing on a said date is proven by the registry return receipt, the affidavit of service and the certification of the Office of the Postmaster. Further, in *South Villa Chinese Restaurant and City Foods Corporation vs. NLRC* [45], the Supreme Court held that under the Revised ROC, the date of the post office stamp on the envelope *or the registry receipt* is considered the date of filing of a pleading sent by registered mail.

This Court recognizes that the filing of administrative protest by registered mail is a practice expressly favored by the BIR itself when it issued Revenue Memorandum Circular No. 39-2013 on April 04, 2013 and signed by herein Respondent. The pertinent provision are as follows:

> "[T]he **guidelines for receipt of protest letters** and other similar correspondences **are clarified as follows:**
>
> 1. All letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall only be filed by the taxpayers or their duly authorized representatives, in person **<u>or through</u>**

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[38] *Emphasis and underscoring supplied.*
[39] Alma B. Russel vs. Teofista Ebasan and Agapito Austria, G.R. No. 184542, April 23, 2010.
[40] Docket, Letter dated July 12, 2013, Exhibit "P-6", pp. 1218 to 1219.
[41] *Id.*, Registry Receipt attached to the Protest to the Formal Assessment Notice, Exhibit "P-5", p. 1193.
[42] *Id.*, Certification from Muntinlupa Central Post Office, Exhibit "P-7-a", p. 1162.
[43] *Id.*, May 17, 2016 Minutes of Hearing, p. 1222.
[44] G.R. No. 184542, April 23, 2010.
[45] G.R. No. 112120, November 23, 1995.

> **registered mail with return card**, with the Office of the concerned Regional Director (RD), Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), who signed the Preliminary Assessment Notices (PANs), FANs and Formal Letters of Demand, for proper recording of the protests, and evaluation if the same is in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99. If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be considered void and without force and effect."[46]

In its Letter dated July 12, 2013, Respondent anchored its claim of Petitioner's failure to file a timely protest on the ground that upon verification from the MCPO, the letter of protest on May 17, 2013 was actually posted and dispatched by MCPO under Registered Letter No. 5281 only on June 19, 2013 or more than thirty (30) days from April 18, 2013.[47]

However, in its Letter-Reply to the BIR dated August 12, 2013[48], Petitioner stated that the administrative protest was duly received by the MCPO for mailing purposes on May 17, 2013. Petitioner then attached a Certification[49] from the MCPO explaining why the same was posted and dispatched only on June 19, 2013, quoted as follows:

> "Above registered mail was received by Lorenzo Banguilan, clerk/dispatcher of the office. When the services of Lorenzo Banguilan was terminated because of his negligence effective June 7, 2013 his work area was inspected and the subject registered mails together with other classes of mails was found, and immediately turned over to the registry dispatcher for dispatch on June 19, 2013, Wednesday thru Bill #88, Page 1. Col. 1, Line 4.
>
> By reason of the foregoing inadvertence and oversight, this Office issued a Certification dated July 10, 2013 upon request of Atty. Gilquin B. Tolentino (RLT AID I, BIR Q.C.) to the effect that the subject mail matter was dispatched on June 19, 2013 despite the

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46 *Emphasis and underscoring supplied.*

47 Docket, Letter dated July 12, 2013 with attached Certification dated *July 10, 2013* and signed by Roberto S. Quiogue, Postmaster V of MCPO; Exhibit "P-6", pp. 1218 to 1219.

48 *Id.*, Reply Letter dated August 12, 2013 to the Letter dated July 12, 2013, Exhibit "P-7", pp. 1220 to 1221.

49 *Id.*, Certification from Muntinlupa Central Post Office, Exhibit "P-7-a", p. 1162.

fact that the same was actually mailed and duly received by Lorenzo Banguilan at the Muntinlupa City Post Office on May 17, 2013."

Mr. Roberto S. Quiogue, the signatory of the said Certification, corroborated the same during his presentation as a witness. The relevant portion of the Stenographic Notes during the May 17, 2016 are as follows:

JUSTICE VICTORINO
Can you tell us the circumstances surrounding the issues of this certification which is dated as August 8, 2013 under OR No. 21619640?

MR. QUIOGUE
A Your Honors, there was a request from Lorenzo Shipping through Lea Fernandez-Manotoc requesting for clarification with regard to the registered mail no. 5281 because *hindi ko po dinedeny nakapag issue kami ng certification yung una sa BIR so there was an oversight, hindi agad nakita na yung registered mail na po na iyun, yun lang po ang registered mail na involve na nakita dun sa folder ng aming terminated na COS na ginawa po naming ng report immediately on duty then ng makita po naming eh June 18, 2013, the following day it was then offered on June 19, 2013 at dinispatch po namin, pero actually yun po ay na receive ni Lorenzo Manguillan on May 17, 2013.*

JUSTICE LIBAN
Then you dispatched on?

MR. QUIOGUE
June 19, 2013."[50]

Based on the foregoing, there is no doubt that the administrative protest was filed on time.

Petitioner received on July 15, 2013[51] a Letter from Respondent dated July 12, 2013 denying its administrative protest. Hence, Petitioner has thirty (30) days or until August 14, 2013 within which to file an appeal before this Court. The receipt of the denial of the administrative protest prompted Petitioner to file the

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[50] Transcript of Stenographic Notes (TSN) dated May 17, 2016, pp. 25 to 26.
[51] Docket, Reply Letter dated August 12, 2013 to the Letter dated July 12, 2013, Exhibit "P-7", pp. 1220 to 1221; Judicial Affidavit of Ms. Edna F. Mendiola, Question No. 31, p. 947.

instant Petition for Review[52] on August 13, 2013 which is well within the period prescribed by law to file the same.

For lack of a definite and unequivocal demand for payment of a certain date, the assessment is perforce void.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*[53], the Supreme Court categorically pronounced that **an assessment contains** not only a computation of tax liabilities, but **also a demand for payment <u>within</u> <u>a</u> <u>prescribed</u> <u>period</u>**.

In other words, an assessment is a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof.[54] It fixes and determines the tax liability of a taxpayer.

In the case at bar, the last paragraph of the undated FAN[55] provides:

> "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 using the BIR Payment Form (BIR Form 0605) attached herewith **<u>within the time shown in the enclosed assessment notice</u>**. Afterwards, submit copy thereof to Regular Large Taxpayers Audit Division – 1 located at Rm 216 National Office Building, Bir Road, Diliman, Quezon City for updating of your records and cancellation of the herein FAN if warranted."

However, a careful scrutiny of the records shows that for each of the enclosed Audit Result/Assessment Notices referred to in the FAN, there is no *indicia* of any definite period or a date certain within which Petitioner must pay the alleged deficiency assessment. On the contrary, the due dates on the enclosed Audit Result/Assessment Notices for all the assessment items were left blank or unaccomplished.[56]

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52 Docket, pp. 14 to 57.
53 G.R. No. 128315, June 29, 1999.
54 Republic v. Lim De Yu, G.R. No. L-17438, April 10, 1964, *citing* Alhambra Cigar and Cigarette Manufacturing Company v. The Collector of Internal Revenue, L-12026, May 29, 1959.
55 Docket, Formal Assessment Notice, Exhibit "P-2", p. 1178; BIR Records, Exhibit "R-4-Merit", p. 1060.
56 *Id.,* Audit Result / Assessment Notices, Exhibit "P-3", p. 1187 to 1192; BIR Records, Exhibits "R-4-a-Merit", "R-4-b-Merit", "R-4-c-Merit", "R-4-d-Merit", "R-4-e-Merit" and "R-4-f-Merit", pp. 1046 to 1051.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[57], the Supreme Court cancelled the Final Assessment Notice as well as the Audit Result/Assessment Notice for failure to contain a definite period for payment of the tax assessed. According to the Supreme Court, the lack thereof negates BIR's demand for payment.

Following the doctrine laid above, Respondent's assessment in this case similarly cannot withstand the test of validity. The subject FAN cannot be deemed a valid formal assessment notice absent a specific date or period within which the alleged tax liabilities must be settled or paid by Petitioner.

It must be emphasized that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue against.[58] The uncertainty in the date of payment is a far cry from the basic requirement, *viz.*, a definite demand to immediately pay the assessed tax liabilities within a time certain.

With the above disquisitions, a discussion on the remaining issues is deemed unwarranted.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the the undated Final Assessment Notice assessing Petitioner deficiency taxes in the aggregate amount of Two Billion, Eight Million, Four Hundred Seventy Two Thousand, Five Hundred Eighty Four and 91/100 Pesos (Php2,008,472,584.91), inclusive of interest, surcharges and compromise penalties for taxable year 2008 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[57] G.R. No. 215957, November 09, 2016.
[58] Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999.

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice