REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL FOODS PROPERTIES, INC. Petitioner,	**CTA EB NO. 1305** (CTA Case Nos. 8185 & 8238)
- versus -	Present: Del Rosario, <u>*P.J.*</u>, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, <u>*JJ.*</u>
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 23 2017 2:59 p.m.

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RESOLUTION

CASTAÑEDA, JR., <u>*J.*</u>:

For resolution of the Court *En Banc* is petitioner's Motion for Reconsideration (on the Decision dated 8 November 2016) filed on December 20, 2016, *sans* respondent's comment.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in view thereof, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the Amended Decision dated April 16, 2015 is **AFFIRMED**.

SO ORDERED."[1]

Petitioner asserts the following arguments in the instant motion:

"(I)

The Final Decision on Disputed Assessment dated February 7, 2011 and the Letter dated November 19, 2008, both issued by Respondent, LEGALLY TREATED and CONSIDERED the administrative protest dated August 12, 2008 protest [*sic*] to the Preliminary Assessment Notice as protest to the Final Assessment Notice.

(II)

Principle of Estoppel has set in. Representation or admission is rendered conclusive upon the person making it."[2]

The instant motion is devoid of merit.

To begin, the Court *En Banc* observes that petitioner merely rehashed its arguments in the Petition for Review, which arguments were already exhaustively discussed in the assailed Decision.

Petitioner belatedly filed its protest to the PAN which rendered it in default

The Court *En Banc* found in the assailed Decision that:

"Here, the Court *En Banc* observes that petitioner filed its protest against the PAN on August 21, 2008, or 17 days from August 4, 2008 after receipt of the PAN. Thus, petitioner should have been considered in default and the issuance of FAN on August 21, 2008 proceeded in its natural course pursuant to the above-quoted provisions."[3]

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[1] Decision, Court En Banc Docket, p. 143.
[2] Discussion, Motion for Reconsideration (on the Decision Dated 8 November 2016), Court En Banc Docket, pp. 146 and 154.
[3] See Note 1, p. 141.

To reiterate, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Section 3.1.2 of Revenue Regulations (RR) No. 12-99, pertinently provide:

> "**SEC. 228. Protesting of Assessment. – xxx**
>
> **xxx xxx xxx**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. **If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations**. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; **otherwise, the assessment shall become final**.xxx" *(Emphasis supplied)*
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> "3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**" *(Emphasis supplied)*

Based on the above-quoted provisions, a taxpayer must respond to the PAN within fifteen (15) days from receipt thereof. Otherwise, the taxpayer shall be considered in default and the Commissioner or his duly authorized representative shall issue an assessment based on his findings. Furthermore, a formal letter of demand and assessment notice shall be issued against the taxpayer. Jz

We lay down the timeline of the antecedent facts, as follows:

August 4, 2008	Petitioner received the PAN
August 21, 2008	(1) Petitioner filed an administrative protest against the PAN (2) Respondent issued the FAN
August 22, 2008	Petitioner received the FAN
October 2, 2008	Petitioner filed a letter with the heading "**PhilFoods Properties, Inc. Protest to the Assessment Notice No. 128052-04-08-0415 and Formal Assessment Notice**."
November 19, 2008	Respondent issued a letter to petitioner, which partly states: "Due to your failure to file letter of protest within the prescribed fifteen (15)-day period on the PAN, your protest letter has been considered against the Formal Assessment Notice (FAN) since the issues involved in the PAN and FAN are the same."
February 7, 2011	Respondent issued the Final Decision on Disputed Assessment (FDDA)

Evidently, petitioner belatedly filed its protest against the PAN on August 21, 2008, or seventeen (17) days from August 4, 2008 when it received the PAN. Thus, petitioner is considered in default. Consequently, there is nothing amiss when respondent issued the FAN on August 21, 2008 with the corresponding demand to pay the said taxes, pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.2 of RR No. 12-99.

The principle of estoppel is not applicable

To continue, it is undisputed that respondent also issued the FAN on August 21, 2008, the same date when petitioner belatedly filed the administrative protest against the PAN. Petitioner received the FAN on August 22, 2008.

In the interim, from August 22, 2008 until November 19, 2008, petitioner had no idea as to the contents of the November 19, 2008 letter, *i.e.*, that its protest against the PAN was considered against the FAN. In other words, it is logical to presume that during the said period, petitioner could not have known the contents of a letter which it only received on November 19, 2008.

Meanwhile, the thirty (30) day period to file the protest against the FAN commenced from August 22, 2008, or until September 21, 2008. Again, from August 22, 2008 until September 21, 2008, petitioner could not have known that its protest to the PAN filed on August 21, 2008 was considered against the FAN, because respondent issued the subject letter only on November 19, 2008.

Petitioner failed to file his protest against the FAN until September 21, 2008. Instead, on October 2, 2008, it filed a letter with the heading "**<u>PhilFoods Properties, Inc. Protest to the Assessment Notice No. 128052-04-08-0415 and Formal Assessment Notice</u>**."

On November 19, 2008, respondent issued the subject letter. Later, on February 7, 2011, respondent issued the FDDA.

In the instant motion, petitioner still asserts that it relied on the wordings of the November 19, 2008 letter and the February 7, 2011 FDDA, which made reference to the protest against the PAN dated August 21, 2008.

Yet, it bears stressing that petitioner only had until September 21, 2008 to file its protest against the FAN. After the lapse of the period to file protest against the FAN, the assessment became final as per Section 228 of the NIRC of 1997, as amended.

Logically, petitioner could not have relied on the contents of a letter issued barely two (2) months after the lapse of the period to file protest against the FAN on September 21, 2008. More so, petitioner could not have relied on the wordings of the FDDA which was issued barely three (3) years after the said date. It is impossible for petitioner to rely on something written in the future.

Considering the foregoing, *We* reiterate *Our* ruling in the assailed Decision that there exists no reliance by petitioner on the representation or conduct of respondent who is sought to be estopped. Thus:

"Article 1431 of the Civil Code states:

'Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and **cannot be denied or disproved as against the person relying thereon**.'

In the old case of *Octavio A. Kalalo v. Alfredo J. Luz*, the Supreme Court explained that one of the essential elements of estoppel 'is that the person invoking it has been influenced and has relied on the representations or conduct of the person sought to be estopped.'

In *British American Tobacco v. Jose Isidro N. Camacho, et al.*, the Supreme Court reiterated the ruling in *Kalalo* and added that:

'The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, **the other in fact relies, and relies reasonably or justifiably, upon that communication**; *third*, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *fourth*, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.

In the early case of *Kalalo v. Luz*, the elements of estoppel, as related to the party to be estopped, are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are other than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.'

Based from *Kalalo* and *British American Tobacco*, it is imperative that for estoppel to operate, there must be a reliance on the representation or conduct of the person sought to be estopped.

In the instant case, there is no circumstance that would show that petitioner relied on the act of respondent of considering the protest against the PAN as protest against the FAN, such that petitioner could have been led to believe that it need not file a protest to the FAN. In fact, records show that petitioner filed a protest against the FAN, albeit belatedly.

On this score, petitioner would like to impress upon the Court *En Banc* that its September 29, 2008 protest letter is a mere "supporting letter or additional protest letter to the protest against the PAN. A reading of the September 29, 2008 protest letter, however, readily reveals that it is a mere rehash of the protest against the PAN. In other words, it neither substantially supported nor presented any additional factual and legal basis to its previous protest against the PAN. Furthermore, the heading of the said letter obviously states: '**PhilFoods Properties, Inc. Protest to the Assessment Notice No. 128052-04-08-0415 and Formal Assessment Notice**.' Considering the foregoing observations, there can be no doubt that petitioner intended the September 29, 2008 letter to be the protest against the FAN, which was belatedly filed on October 2, 2008. Thus, petitioner's protest to the PAN cannot be considered as the protest to the FAN. Consequently, considering the late filing of the protest against the FAN, the Court in Division is correct in holding that the 2004 Assessment had already become final."[4]

To conclude, petitioner failed to convince *Us* that it relied on the representations of respondent in the November 19, 2011 letter and in the February 7, 2011 FDDA when it dispensed with the filing of its protest against the FAN. Hence, the Court *En Banc* sees no cogent reason to disturb its previous findings.

WHEREFORE, petitioner's Motion for Reconsideration (on the Decision dated 8 November 2016) is **DENIED**, for lack of merit. Accordingly, the Decision dated November 8, 2016 is **AFFIRMED.** ju

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[4] See Note 1, pp. 141-142.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice