REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GRAND PLAZA HOTEL CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8992

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

JUL 04 2018
3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This Petition for Review filed on February 20, 2015 by Grand Plaza Hotel Corporation prays that the tax deficiency assessment in the amount of ₱508,101,387.12 for the fiscal year 2008 be declared null and void and be cancelled in *toto*.

THE FACTS

Petitioner Grand Plaza Hotel Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 10th Floor, The Heritage Hotel Manila, EDSA corner Roxas Boulevard, Pasay City.[1] It is engaged in the business of owning, operating, leasing, and managing hotels in the Philippines. Petitioner owns and operates the Heritage Hotel on Roxas Boulevard, Pasay City.[2]

On the other hand, respondent Commissioner of Internal Revenue is the duly appointed head of the Bureau of Internal Revenue (BIR), the government agency in charge of the assessment and collection of all internal revenue taxes, fees and charges. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Letter of Authority (LOA) No. 2008 00033741[4] dated July 1, 2009 was issued to authorize certain Revenue Officers to examine the books of accounts of petitioner for taxable year 2008.[5] Meanwhile, petitioner executed several Waivers of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code (NIRC) to extend the period to assess.[6]

On July 18, 2013, petitioner received the Preliminary Assessment Notice[7] (PAN) informing petitioner that respondent has found a tax deficiency in the total amount of ₱500,106,960.18, inclusive of interest, for taxable year 2008, broken down as follows:[8]

	TAX DEFICIENCY	20% INTEREST	TOTAL AMOUNT
Income Tax	₱175,931,100.38	145,083,341.24	321,014,441.61
Withholding Tax on Compensation	17,900,584.89	18,903,017.64	36,803,602.53
Expanded Withholding Tax	628,020.31	663,189.44	1,291,209.75

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[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 540.
[2] Par. 2, Summary of Admitted Facts, JSFI, docket, vol. I, pp. 540-541.
[3] Par. 3, Summary of Admitted Facts, JSFI, docket, vol. I, p. 541.
[4] Exhibit "P-32", docket, vol. I, p. 454.
[5] Par. 4, Summary of Admitted Facts, JSFI, docket, vol. I, p. 541.
[6] Exhibits "P-35", "P-36", "P-37", and "P-38", docket, vol. I, pp. 474-477.
[7] Exhibit "P-33", docket, vol. I, pp. 455-461.
[8] Par. 5, Summary of Admitted Facts, JSFI, docket, vol. I, p. 541.

Documentary Stamp Tax	363,921.74	384,665.28	748,587.02
Value-Added Tax	67,753,197.71	72,495,921.55	140,249,119.27
TOTAL	₱262,576,825.03	₱237,530,135.15	₱500,106,960.18

Petitioner received a Formal Letter of Demand[9] (FLD) with its corresponding Audit Result/Assessment Notices[10] on September 19, 2013. The principal amounts assessed under the PAN are the same as that in the FLD, except for the amounts of interest which have increased, to wit:

	TAX DEFICIENCY	**20% INTEREST**	**TOTAL AMOUNT**
Income Tax	₱175,931,100.38	153,411,919.53	329,343,019.90
Withholding Tax on Compensation	17,900,584.89	19,493,736.95	37,394,321.84
Expanded Withholding Tax	628,020.31	684,542.13	1,312,562.44
Documentary Stamp Tax	363,921.74	396,674.70	760,596.44
Value-Added Tax	67,753,197.71	74,528,517.49	142,281,715.20
TOTAL	₱262,576,825.03	₱248,515,390.80	₱511,092,215.83

On November 21, 2013, petitioner wrote a letter[11] to respondent informing the latter that, as a sign of good will, it made a partial payment of ₱2,073,158.88 inclusive of the twenty percent (20%) interest based on the FLD for the following items:

		DATE PAID	**FILING REF. NO.**
Expanded Withholding Tax	₱1,312,562.44	November 21, 2013	2913000008099000
Documentary Stamp Tax	760,596.44	November 21, 2013	2913000008099105
TOTAL	₱2,073,158.88		

On December 17, 2013, petitioner then received a Collection Letter[12] dated December 4, 2013, for ₱508,101,387.12, inclusive of surcharges and interest, broken down as follows:

[9] Exhibit "P-34", docket, vol. I, pp. 462-468.
[10] Exhibits "P-34.1" to "P-34.5", docket, vol. I, pp. 469-473.
[11] Exhibit "P-39", docket, vol. I, pp. 478-485.
[12] Exhibit "P-41", docket, vol. I, p. 486.

	DEFICIENCY TAX	SURCHARGE	INTEREST	TOTAL AMOUNT
Income Tax	₱175,931,100.38	0.00	150,421,090.82	326,352,191.20
Withholding Tax on Compensation	17,900,584.89	0.00	19,493,736.95	37,394,321.84
Expanded Withholding Tax	628,020.31	0.00	684,542.13	1,312,562.44
Documentary Stamp Tax	363,921.74	0.00	396,674.70	760,596.44
Value-Added Tax	67,753,197.71	0.00	74,528,517.49	142,281,715.20
TOTAL	₱262,576,825.03	0.00	₱245,524,562.09	₱508,101,387.12

Petitioner subsequently wrote a letter[13] on December 20, 2013 to respondent, stating that petitioner was informed by Revenue Officer Atty. Carolyn V. Mendoza to pay only those assessments that it does not raise any objection to. Petitioner also mentioned that it does not agree with the assessment of the BIR regarding Income Tax, Withholding Tax on Compensation, and Value-Added Tax.

On December 27, 2013, petitioner again wrote a letter[14] to respondent, reiterating that it already made partial payment, and informing the BIR that further reconciliation of the other items is ongoing.

Petitioner sent another letter[15] to respondent on January 20, 2014, transmitting the partial accounts reconciliation of the discrepancies being assessed against it.

On February 17, 2014, petitioner wrote a letter[16] to respondent, requesting for reinvestigation of the tax deficiency assessment. This was followed by the submission of additional accounts reconciliation on the alleged discrepancies stated in the PAN on July 11, 2014.[17]

Subsequently, on November 7, 2014, petitioner received a letter[18] dated November 6, 2014 from respondent denying its request for reinvestigation.

[13] Exhibit "P-40", docket, vol. I, pp. 487-489.
[14] Exhibit "P-42", docket, vol. I, pp. 490-492.
[15] Exhibit "P-43", docket, vol. I, pp. 493-506.
[16] Exhibit "P-44", docket, vol. I, pp. 507-519.
[17] Exhibit "P-46", docket, vol. I, pp. 522-528.
[18] Exhibit "P-45", docket, vol. I, pp. 520-521.

On February 16, 2015, petitioner received a notice[19] from respondent requesting petitioner to pay the deficiency taxes for taxable year 2008, amounting to ₱506,028,228.24, broken down as follows:

ASSESSMENT NO.	TAX TYPE	PERIOD COVERED	BASIC	SURCHARGE	INTEREST	COMP. PENALTY	TOTAL
WC-116-109-00033741-08-13-133	WC	2008	17,900,584.89	0.00	19,493,736.95	0.00	37,394,321.84
VT-116-109-00033741-08-13-1336	VT	2008	67,753,197.71	0.00	74,528,517.49	0.00	142,281,715.20
IT-116-109-00033741-08-13-132	IT	2008	175,931,100.38	0.00	150,421,090.82	0.00	326,352,191.20
TOTAL			**262,576,825.03**	**0.00**	**245,524,562.09**	**0.00**	**506,028,228.24**

As a result, petitioner filed the instant Petition for Review[20] before this Court on February 20, 2015.

Respondent filed a Motion for Extension of Time To File Answer (Re: Petition for Review dated 20 February 2015)[21] on March 20, 2018. This was granted by the Court in the Order dated March 23, 2015[22] and respondent was given until April 20, 2015 within which to file his Answer.

On May 5, 2015, respondent filed a Motion for Leave to File and Admit Attached Answer[23]. In the Resolution[24] dated May 8, 2015, the Court granted respondent's motion and admitted the subject Answer[25]. Respondent interposed the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

<u>No jurisdiction for failure to comply with the reglementary period</u>

4. At the outset, respondent respectfully submits that this Honorable Court has no jurisdiction to entertain

[19] Exhibit "P-47", docket, vol. I, p. 529.
[20] Docket, vol. I, pp. 6-32.
[21] Docket, vol. I, pp. 149-152.
[22] Docket, vol. I, p. 154.
[23] Docket, vol. I, pp. 155-159.
[24] Docket, vol. I, pp. 174-175.
[25] Docket, vol. I, pp. 161-172.

this instant case in view of petitioner's failure to comply with the reglementary period required by law in filing an administrative protest pursuant to Revenue Regulations No. 12-99, implementing Section 228 of the 1997 Tax Code.

5. A mere perusal of the allegations in the *Petition for Review* quickly show that the instant appeal was filed out of time.

6. On 19 September 2013, petitioner received a Formal Letter of Demand ('FLD'). Thus, petitioner has until 19 October 2013 within which to file its protest, and must file his supporting documents 60 days after the filing of such protest, in accordance with RR 12-99, as amended by RR 18-2013.

7. As held in the case of *Adelardo K. Pagente vs. Hon. Esmeralda M. Tabule*, CTA EB No. 1030, June 3, 2014, 'as assessment that has not been protested, becomes final and executory and cannot be the subject of an appeal. The taxpayer's failure to comply with the 30-day statutory period barred the appeal and deprived the CTA of its jurisdiction to entertain and determine the correctness of the assessment. With the taxpayer having lost not only the remedy of protest but also of appeal, the assessment attained finality and became executory'

8. In the case at bar, petitioner was only able to file the instant case only on 20 February 2015, or after a lapse of 489 days, clearly petitioner has already lost its right to appeal the instant assessment.

9. A taxpayer who wishes to protest must follow the rules under Revenue Regulation No. 12-99, specifically Section 3.1.5:

> '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 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

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prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect*. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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

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

> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the **taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision**, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
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> **If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.** (*Emphasis supplied*)

10. In the case at bench, petitioner should have protested the assessment on or before 19 October 2013.

11. As the reglementary period to protest the assessment has already lapsed, the assessment has already become final and executory under Sec. 228 of the NIRC, which states that:

> **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.**

12. Even arguing, although vehemently not conceding, that this Honorable Court has jurisdiction, petitioner is still liable to pay the deficiency Income Tax, VAT and Withholding Tax on Compensation based on the foregoing.

13. Petitioner challenges the said assessment on three grounds (1) The tax deficiency assessment is void for failure of the Formal Letter of Demand to indicate a due date for payment (2) the tax deficiency assessment is void because the waivers executed did not extend the three year prescriptive period to assess (3) The tax deficiency assessment does not clearly indicate the facts and law on which the assessment is based.

The Formal Letter of Demand is valid

14. Petitioner contends that the Formal Letter of Demand is void for failure to indicate a specific due date of the demand for tax payment.

15. The said argument has no leg to stand on. It is basic and is specifically stated in Sec, 228 of the NIRC, and in RR 12-99 as amended, that a taxpayer who wishes to contest the assessment must file his written protest within thirty (30) days from receipt of the Formal Letter of Demand and assessment notice.

16. In the case at bar, petitioner was not able to file said protest in time. As previously discussed, the effect for such non-failure is that the assessment now becomes final, and based on jurisdictional grounds, this Honorable Court must dismiss the instant petition for lack of jurisdiction.

Waivers executed were valid

17. Petitioner next contends that the assessment has already prescribed as the waivers executed were void.

18. Petitioner admits that it has executed a waiver of the period to assess up until 30 June 2014. As the

Formal Letter of Demand was served to petitioner on 19 September 2013, it was clearly within the period to assess.

19. Petitioner however, challenges that the said waivers were void for failure to follow the requisite under BIR Revenue Memorandum order No. 20-1990 (RMO 20-90) and Revenue Delegation Administrative Order No. 05-2001 (RDAO 05-01), and as decided by the Supreme Court in Philippine Journalists, Inc. vs. Commissioner of Internal Revenue.

20. Regarding petitioner's contention that the waivers were not notarized, respondent submits that said duty to have the waivers notarized is a duty that evidently belongs to petitioner's authorized representative. He cannot thereafter question his own acts and alleged invalidity.

21. Moreover the execution of the waiver were for the benefit of the petitioner who wishes to contest the initial findings of the respondent. Respondent only agreed with the execution of the waivers as petitioner wanted to contest the initial findings. Understandably, by contesting the initial findings of the respondent, the latter would require more time to audit petitioner's deficiency taxes. Petitioner cannot now come into this Honorable Court and demand that the execution of the waivers were invalid when in the first place, it was a contract between the petitioner and respondent.

22. Also, assuming that the persons who executed the waiver were not empowered to do so, yet petitioner is estopped from questioning the authority of said persons as it had lead the Revenue Officers who handled the audit to believe that said persons had the authority to bind the petitioner by their acts of representing the petitioner. This is best shown by the fact that these persons were the ones who appeared before the Revenue Officers when petitioner was invited for a conference, and these are the people who transacted with respondent's officers as representing the petitioner. This is again bolstered by the fact that the time the first waiver was executed, petitioner did not contest the extension of the period to assess.

23. This only shows that petitioner had made respondent believe that the person who transacted in its name were persons authorized by petitioner to do so. Clearly, the doctrine of estoppel is applicable.

24. The essence of estoppel and laches is the failure 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; it is the negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it although there is no absolute rule as to what constitutes staleness of demand as each case is to be determined according to its particular circumstances.

25. Article 1431 of the Civil Code provides that in order that estoppel may apply to the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. Article 1431 states that:

> 'Art. 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.'

26. The case of Kalalo v. Luz discussed estoppel in this wise:

> 'The essential elements of estoppel in pais may be considered in relation to the party sought to be estopped, and in relation to the party invoking the estoppel in his favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that his conduct shall be acted

upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in questions; (2) (reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as To change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.

27. On the other hand, Section 2(a) of Rule 131 of the Rules of Court, on the burden of proof and presumptions, states as follows:

'Section 2. *Conclusive presumptions.* — The following are instances of conclusive presumptions:

'(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led to another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it,'

28. It is now noteworthy to pinpoint petitioner's conduct amounting to false representation or concealment of material facts calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.

The assessment has factual and legal basis

29. As stated in the Details of Discrepancies attached to the Preliminary Assessment Notice and the Formal Letter of Demand, it was indicated there in the factual and legal basis on which petitioner has deficiency income tax, VAT, and withholding tax on compensation.

30. The said amount was arrived at by computing the relevant transactions made by petitioner, such as the verification disclosed per its Alpha List and Income Tax Return, matching of the summary list of sales versus relief versus BIR Form 2307, Third Party Information Program, verification from petitioner's submitted Financial Statements, failure to substantiate its rental income, non-inclusion of service charge declared by the petitioner, summary list of purchases submitted by its customers, and others indicated in the details of discrepancies.

31. Moreover, a quick purview of the PAN and the Formal Letter of Demand shows the relevant laws on which it is based, such as Sections 32, 5(B), 34(K), 80, 108, 109, 179 and 194 of the Tax Code, and RR 2-98

The right to assess has not prescribed

32. Furthermore, even arguing that the right to assess was made beyond the three year period to assess as mandated by the NIRC, yet the period to assess still has not prescribed.

33. This is because petitioner had submitted an under declaration of its Income Tax Return, and said under declaration exceeded more than 30% as that found when respondent assessed Petitioner.

34. Such substantial under-declaration rendered petitioner's tax return filed for calendar year 2008 as **a false or fraudulent return** prescribed by Section 248 (B) of the National Internal Revenue Code of 1997, as amended, thus creating prima facie evidence of a false or fraudulent return.

35. Section 248 (B) of the NIRC states in part that:

> xxx **A substantial underdeclaration** of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute**

> ***prima facie* evidence of a false or fraudulent return**: *Provided, further*, **That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return**, and a claim of deductions in an amount exceeding (30%) of actual deductions, **shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein**.

36. As the discrepancy between the ITR filed and the actual sales is more than 30%, there is clearly a substantial under declaration which is a prima facie evidence of fraud. Thus, the right to assess does not prescribe until ten (10) years thereafter, or up until the year 2018.

37. Similarly, the above-stated under-declaration of VAT sales and Withholding Tax on Compensation exceeds the amount of thirty percent (30%) of that declared per return. Such substantial under-declaration rendered petitioner's returns filed for calendar year 2008 as a false or fraudulent return prescribed by Section 248(B) of the National Internal Revenue Code of 1997, as amended, thus creating prima facie evidence of a false or fraudulent return

38. Based on the foregoing, respondent has ten (10) years within which to assess petitioner/ thus the right to assess clearly has not prescribed.

<u>Final discussions</u>

39. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments. *gr*

40. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

41. All presumptions are in favor of the correctness of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice."

The pre-trial conference was set on June 11, 2015.[26] This was cancelled in the Resolution[27] dated May 26, 2015, wherein the Court noted and granted petitioner's Manifestation and Motion filed on May 20, 2015[28] and on May 25, 2015[29].

Within the extended time granted by the Court,[30] petitioner filed its Reply (To the Respondent's Answer Dated 05 May 2015)[31] on July 10, 2015.

The Pre-Trial Conference was reset to August 6, 2015.[32] The Pre-Trial Brief for the Respondent[33] was filed on July 31, 2015; while the Pre-Trial Brief for Petitioner[34] was filed on August 3, 2015.

On August 26, 2015, the parties submitted their Joint Stipulation of Facts and Issues[35]. The Court approved and adopted the joint stipulations in the Pre-Trial Order[36] issued on September 2, 2015, which also terminated the pre-trial.

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[26] Notice of Pre-Trial Conference dated May 12, 2015, docket, vol. I, pp. 176-177.
[27] Docket, vol. I, p. 186.
[28] Docket, vol. I, pp. 181-184.
[29] Docket, vol. I, pp. 178-180.
[30] Resolution dated June 24, 2015, docket, vol. I, p. 196.
[31] Docket, vol. 198-207.
[32] Notice of Pre-Trial Conference dated July 14, 2015, docket, vol. I, pp. 208-209.
[33] Docket, vol. I, pp. 220-224.
[34] Docket, vol. I, pp. 227-243.
[35] Docket, vol. I, pp. 540-558.
[36] Docket, vol. II, pp. 578-586.

During trial, petitioner presented the following as witnesses: Ms. Maria Cecilia G. Bernardo[37], its Administrative and Corporate Relations Manager; and Atty. Maria Christina J. Macasaet-Acaban[38], its Corporate Secretary.

Petitioner filed its Formal Offer of Evidence[39] on November 6, 2015.

In a Resolution[40] dated January 4, 2016, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-33", "P-34", "P-34.1", "P-34.2", "P-34.3", "P-34.4", "P-34.5", "P-35", "P-36", "P-37", "P-38", "P-39", "P-39.1", "P-39.2", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-49.1", "P-50", and "P-50.1". However, the Court denied the admission of Exhibit "P-32", for failure of the exhibit formally offered and identified to correspond with the document actually marked.

Petitioner filed a Motion for Partial Reconsideration with Amended Formal Offer of Evidence[41] on January 20, 2016 for the admission of Exhibit "P-32". This was granted by the Court in the Resolution[42] dated March 11, 2016.

Respondent did not present any testimonial evidence but filed his Formal Offer of Evidence[43] on July 4, 2016.

In the Resolution[44] dated July 27, 2016, respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-7", "R-8", "R-9", "R-10", "R-12", "R-13", "R-15", and "R-15-A" were admitted into evidence. However, Exhibit "R-11" was denied admission for failure to submit the original

[37] Exhibit "P-49", Judicial Affidavit of Ms. Maria Cecilia G. Bernardo (Dated 27 July 2015), docket, vol. I, pp. 252-273; Minutes of the Hearing dated September 21, 2015, docket, vol. II, p. 590.
[38] Exhibit "P-50", Judicial Affidavit of Atty. Maria Christina J. Macasaet-Acaban (Dated 24 August 2015), docket, vol. I, pp. 565-570; Minutes of the Hearing dated September 21, 2015, docket, vol. II, p. 590.
[39] Docket, vol. II, pp. 642-663.
[40] Docket, vol. II, pp. 698-699.
[41] Docket, vol. II, pp. 702-706.
[42] Docket, vol. II, pp. 738-739.
[43] Docket, vol. II, pp. 801-806.
[44] Docket, vol. II, pp. 823-824.

for comparison and for failure of the exhibit formally offered to correspond with the actual document, while Exhibit "R-14" was denied admission for failure to identify.

The Memorandum for the Petitioner[45] was filed on April 15, 2016. On the other hand, respondent manifested that he is adopting the arguments raised in his Answer dated May 5, 2015 as his Memorandum.[46] The case was then submitted for decision via Resolution[47] dated September 6, 2016.

On March 7, 2017, petitioner filed an Urgent Motion (to Allow Payment of Taxes).[48] In the Resolution[49] dated August 15, 2017, the motion was set for hearing on August 31, 2017 and the Resolution dated September 6, 2016 submitting the case for decision was recalled and set aside.

On August 24, 2017, petitioner filed a Manifestation with Omnibus Motion (1) To Withdraw the Urgent Motion to Allow Payment of Taxes; (2) To Cancel the Hearing on 31 August 2017; and (3) To Submit the Case for Decision[50]. This was granted by the Court in the Order[51] dated August 31, 2017 and the case was again submitted for decision.

THE ISSUE

The parties submitted the following issue for this Court's disposition:[52]

> "Whether petitioner is liable to pay the amount ₱37,394,321.84, ₱142,281,715.20 and ₱326,352,191.20 representing Withholding Tax on Compensation, VAT, and Income Tax Assessment respectively, or in the total aggregate amount of **₱508,101,387.12** for taxable year 2008, exclusive of increments." *gr*

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[45] Docket, vol. II, pp. 745-781.
[46] Manifestation, docket, vol. II, pp. 825-826.
[47] Docket, vol. II, p. 828.
[48] Docket, vol. II, pp. 830-836.
[49] Docket, vol. II, pp. 887-888.
[50] Docket, vol. II, pp. 889-892.
[51] Docket, vol. II, p. 895.
[52] Issue to be Resolved, JSFI, docket, vol. I, p. 542.

THE COURT'S RULING

The Court has no jurisdiction to entertain the present petition.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[53]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[54] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue; *gr*

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[53] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

[54] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, 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 laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, 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 laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for

> action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;" (*Emphasis supplied*)

It is clearly and specifically stated in the afore-quoted provisions that this Court has jurisdiction over the decision of or inaction by the Commissioner of Internal Revenue in cases involving disputed assessments. However, this does not cover assessment which became final, executory, and demandable. The rule is that for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court.[55]

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*[56], the Supreme Court held that the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed means that the validity or correctness of the assessment may no longer be questioned on appeal.

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[55] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.
[56] G.R. No. 169225, November 17, 2010.

Respondent argues that the Court has no jurisdiction to entertain the instant case in view of petitioner's failure to comply with the reglementary period required by law in filing an administrative protest pursuant to Revenue Regulations No. 12-99, implementing Section 228 of the National Internal Revenue Code of 1997, as amended.

The procedure for protesting an assessment is provided in Section 228 of the NIRC of 1997, as amended, to wit:

> "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 thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from

> submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Moreover, under Section 3.1.5 of Revenue Regulations No. 12-99, there is a disputed assessment when the Formal Letter of Demand and the assessment notice are administratively protested by the taxpayer within thirty (30) days from the date of receipt of the Formal Letter of Demand, thus:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –*
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 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 xxx
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.** xxx" *(Emphasis supplied)*

Pursuant to the foregoing provisions, the protest to the formal letter of demand and the assessment notice must be made within thirty (30) days from the taxpayer's receipt of the deficiency tax assessment; otherwise, the assessment becomes final, executory, and demandable. *Jr*

Moreover, in *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[57], the Supreme Court held:

> "The inevitable conclusion is that **BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable**. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments." (*Emphasis supplied*)

The records show that on September 19, 2013, petitioner received the Formal Letter of Demand[58] with its corresponding Audit Result/Assessment Notices[59].

Counting thirty (30) days from receipt of the FLD/FAN on September 19, 2013, petitioner had until October 19, 2013 within which to file its protest. However, petitioner failed to file a protest to the FLD/FAN within the reglementary period.

Instead, petitioner wrote a letter[60] to respondent on November 21, 2013 stating that it made a partial payment of ₱2,073,158.88 inclusive of the twenty percent (20%) interest based on the FLD for EWT and DST. It was only on February 17, 2014 that petitioner sent to respondent a letter[61] requesting for reinvestigation of tax deficiency.

Thus, for failure to file a protest within the reglementary period, the assessment in question became final, executory, and demandable. The fact that an assessment has become final for failure of the taxpayer to file a protest within the reglementary period means that the validity or correctness of the assessment may no

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[57] G.R. No. 134062, April 17, 2007.
[58] Exhibit "P-34", docket, vol. I, pp. 462-468.
[59] Exhibits "P-34.1" to "P-34.5", docket, vol. I, pp. 469-473.
[60] Exhibit "P-39", docket, vol. I, pp. 478-485.
[61] Exhibit "P-44", docket, vol. I, pp. 507-519.

longer be questioned on appeal. Consequently, this Court has no jurisdiction to entertain the present petition.

WHEREFORE, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
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's Division.

JUANITO C. CASTAÑEDA, JR.
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