REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL FOODS PROPERTIES, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1305
(CTA Case No. 8185 & 8238)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, JJ.

Promulgated:

NOV 08 2016 3:20 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This Petition for Review filed by petitioner Phil Foods Properties, Inc., seeks to partially set aside the Amended Decision[1] of the Court in Division dated April 16, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the 'Motion for Partial Reconsideration' and 'Motion for Reconsideration' are hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the decision dated December 3, 2014 is hereby **AMENDED** to read as follows: je

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[1] Court in Division Docket, Vol. 2, pp. 910-928, penned by Associate Justice Lovell R. Bautista.

'**WHEREFORE**, the Petition for Review docketed as CTA Case No. 8238 by petitioner Phil Foods Properties, Inc. is hereby **DENIED** for lack of jurisdiction, while the Petition for Review docketed as CTA Case No. 8185 by petitioner Phil Foods Properties, Inc. is hereby **PARTIALLY GRANTED**.

Petitioner is hereby **ORDERED TO PAY** the deficiency for Value-Added Tax and Expanded Withholding Tax for the taxable year ended December 31, 2006, in the modified amount of PhP247,967.25, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the Tax Code, computed as follows:

TAX TYPE	BASIC DEFICIENCY	25% SURCHARGE	TOTAL
VAT	182,064.78	45,516.195	227,580.975
EWT	16,309.00	4,077.25	20,386.25
TOTAL			**PhP247,967.25**

In addition, petitioner is liable to pay:

xxx xxx xxx

SO ORDERED."

THE FACTS

The following are the facts[2] as found by the Court in Division:

"As stated in the Consolidated Joint Stipulation of Facts and Simplification Issues ('CJSFSI') dated Decmeber 22, 2011, the factual antecedents of this consolidated case are as follows:

'**TAX ASSESSMENT COVERING TAXABLE YEAR 2006**

3. Sometime in September 2007, [r]espondent issued a Tax Verification Notice No. 00050351 dated September 7, 2007, authorizing Revenue Officer (RO) RYAN L. DAGALANGIT under the supervision of Group Supervisor (GS) MARIVEL G. BELLO of Revenue District Office No. 50 – Revenue Region No. 8 to examine/audit [p]etitioner's internal revenue taxes for the period from January 1, 2006 to December 31, 2006. *ge*

[2] Decision dated December 3, 2014, Court in Division Docket, Vol. 2, pp. 824-834, penned by Associate Justice Lovell R. Bautista.

4. After the Revenue Officer conducted his examinations which includes but not limited to the duly filed tax returns, books and other accounting records of [p]etitioner, the former submitted his report on his findings, which as a result, a Notice of Informal Conference dated February 19, 2009 was issued assessing [p]etitioner for the following alleged deficiency internal revenue taxes for the taxable year 2006, in the total amount of P3,931,307.77, inclusive of interest and compromise penalties, to wit:

xxx xxx xxx

5. After a series of informal discussions, [r]espondent issued a Preliminary Assessment Notice dated December 7, 2009 (hereinafter referred to as '**PAN**'), wherein [p]etitioner was being assessed for alleged deficiency taxes, inclusive of interest and compromise penalties, in the total amount of P4,256,62[7].68 broken down as follows:

xxx xxx xxx

6. Despite having protested the PAN, [r]espondent issued an Assessment Notice-Formal Assessment Notice on January 13, 2010 (AN-FAN) reiterating the alleged deficiency internal revenue taxes contained in the PAN as follows:

xxx xxx xxx

7. On October 1, 2010, [p]etitioner received a Final Decision on Disputed Assessment (attached herein as Annex 'A') of [r]espondent, through Jaime B. Santiago, CESO V, Regional Director of Revenue Region No. 8, finally denying the protest of [p]etitioner thereby reiterating the alleged assessment for internal revenue taxes contained in the AN-FLD for the collection of the alleged internal revenue taxes and requesting the [p]etitioner to pay the aforesaid alleged tax liability within ten (10) days from receipt on or before November 5, 2010, otherwise, petitioner may opt to appeal with this Honorable Court of Tax Appeals within thirty (30) days from receipt on October 1, 2010 or until October 31, 2010.

xxx xxx xxx

<u>TAX ASSESSMENT COVERING TAXABLE YEAR 2004</u>

9. Sometime in February 2006, [r]espondent issued a Tax Verification Notice No. 128052 dated February 8, 2006, authorizing Revenue Officer (RO) JOEL F. EVANGELISTA under the supervision of Group Supervisor (GS) JOSEPHINE M. ELARMO of Revenue District Office No. 50 – Revenue Region No. 8, Makati City to examine/audit herein [p]etitioner's internal revenue taxes for the period from January 1, 2004 to December 31, 2004.

10. After the Revenue Officer conducted his examinations of the records of the [p]etitioner, which includes but not limited to the duly filed tax returns, books and other accounting records of herein [p]etitioner, the former submitted his report on his findings through a Notice of Informal Conference dated December 5, 2007 assessing herein [p]etitioner for the following alleged deficiency internal revenue taxes for the taxable year 2004, in the total amount of **P4,207,957.83** inclusive of interest and compromise penalties, to wit:

xxx xxx xxx

11. After a series of informal discussions, herein [r]espondent issued a Preliminary Assessment Notice dated July 25, 2008 (hereinafter referred to as '**PAN**'), whereby herein [p]etitioner was being assessed for alleged deficiency taxes, inclusive of interest, in the total amount of **P4,513,477.44**, broken down as follows:

xxx xxx xxx

12. Based on the PAN, [p]etitioner duly filed a Protest within the time required by the regulations contesting the factual and legal basis of the [r]espondent's assessment.

13. Despite having protested the PAN, herein [r]espondent issued an Assessment Notice-Formal Assessment Notice on August 21, 2008 (AN-FAN) reiterating the following alleged deficiency internal revenue taxes contained in the PAN for taxable year 2004:

xxx xxx xxx

14. On February 9, 2011, herein [p]etitioner received a Final Decision on Disputed Assessment issued by [r]espondent, through the Regional Director of Revenue Region No. 8, Hon. Jaime B. Santiago, CESO V, finally denying the protest and requiring petitioner to pay the alleged internal revenue tax deficiencies or to file an appeal to the Office of the BIR Commissioner or to the Honorable Court of Tax

Appeals within thirty (30) days from receipt on February 9, 2011 or until March 11, 2011.

xxx xxx xxx'

Thus, on October 29, 2010, petitioner filed a Petition for Review with the Court, docketed as CTA Case No. 8185.

On January 17, 2011, respondent filed her Answer in the case docketed as CTA Case No. 8185, interposing the following Special and Affirmative Defenses:

xxx xxx xxx

On March 11, 2011, petitioner filed another Petition for Review, which was docketed as CTA Case No. 8238.

On May 23, 2011, respondent filed her Answer in the case docketed as CTA Case No. 8238, interposing the following Special and Affirmative Defenses:

xxx xxx xxx

On May 27, 2011, the parties filed their JSFI, and thus a Pre-Trial Order was issued on June 10, 2011, for the case docketed as CTA Case No. 8185.

On July 27, 2011, the parties filed their JSFI for the case docketed as CTA Case No. 8185.

On August 31, 2011, petitioner filed a Motion for Consolidation (CTA Case 8238 and CTA Case 8185), praying that the two cases be consolidated as it deals with identical issues except only for the taxable periods covered.

On September 21, 2011, the Second Division of the Court issued a Resolution granting the Motion for Consolidation of the case docketed as CTA Case No. 8238 to the case docketed as CTA Case No. 8185, which was assigned to the Third Division. gr

Considering the consolidation, the Court ordered the parties to submit their respective consolidated Pre-Trial Briefs before the scheduled consolidated Pre-Trial.

On December 22, 2011, the parties filed a Consolidated Joint Stipulation of Facts and Simplification of Issues, thus a corresponding Pre-Trial Order for the consolidated cases was issued on January 11, 2012.

On July 2, 2012, petitioner filed its Formal Offer of Evidence, which was resolved by the Court on July 31, 2012.

On July 31, 2013, petitioner again filed a Formal Offer of Evidence, offering the additional documentary exhibits.

On the other hand, respondent filed her Formal Offer of Evidence on August 28, 2013. In response, petitioner filed a Comment (to Formal Offer of Evidence August 27, 2013).

On September 24, 2013, the Court issued a Resolution admitting the exhibits offered in its Formal Offer of Evidence dated July 31, 2013. In the same manner, a Resolution was issued by the Court on October 25, 2013, resolving respondent's Formal Offer of Evidence, as well as ordering the parties to file simultaneously within thirty (30) days their respective memorandum.

On December 18, 2013, petitioner filed its Memorandum (for the petitioner), while respondent filed on December 16, 2013, through registered mail, a Manifestation and Motion stating that she is adopting all her arguments in the respective Answers filed for the consolidated case.

Thus, on January 3, 2014, the Court promulgated a Resolution submitting the case for Decision."

On December 3, 2014, the Court in Division rendered its decision,[3] the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review docketed as CTA Case No. 8185 by petitioner Phil Foods Properties, Inc. is hereby **DENIED** for lack of jurisdiction, while the Petition for Review docketed as CTA

[3] Id., pp. 823-853.

Case No. 8238 by petitioner Phil Foods Properties, Inc. is hereby **PARTIALLY GRANTED.**

Petitioner is hereby **ORDERED TO PAY** the deficiency for Value-Added Tax and Expanded Withholding Tax for the taxable year ended December 31, 2006, in the modified amount of Php567,992.06, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the 1997, computed as follows:

xxx xxx xxx

SO ORDERED."

Significantly, one of the issues resolved by the Court in Division in the subject Decision is the finality of the 2004 Assessment in CTA Case No. 8238. In ruling that the 2004 Assessment was already final and executory, the Court in Division held that:

"However, the same cannot be said of CTA Case No. 8238 ('2004 Assessment'). A FAN was issued by the BIR on August 21, 2008, which was received by petitioner on August 22, 2008. A protest was filed by petitioner on October 2, 2008, which was clearly filed out of time, as Section 228 of the 1997 NIRC only allows the taxpayer thirty (30) days from the receipt of the assessment.

Thus, the 2004 Assessment became final and executory. For this reason, the assessments did not become disputed assessments as subject to the Court's review the law."[4]

On December 22, 2014, petitioner filed its Motion for Reconsideration.[5] On December 18, 2014, respondent also filed through registered mail her Motion for Partial Reconsideration.[6] On April 16, 2015, the Court in Division rendered the assailed Amended Decision.[7]

In upholding its ruling in CTA Case No. 8238, the Court in Division explained that:

"Section 228 of the Tax Code expressly grants the taxpayer thirty (30) days from receipt of the assessment to protest the same. Otherwise, the assessment shall be considered final and executory. We quote:

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[4] Id., p. 840.
[5] Court in Division Docket, Vol. 2, pp. 857-868.
[6] Court in Division Docket, pp. 873-882.
[7] See Note 1.

xxx xxx xxx

> The records of the case establish that the Formal Assessment Notice ('FAN') dated August 21, 2008 was received by petitioner on August 22, 2008. Subsequent thereto, petitioner filed its protest on October 2, 2008, or exactly Forty-One (41) days after receipt of the FAN. Undeniably, petitioner's protest was filed out of time, pursuant to Section 228 of the Tax Code. Consequently, the 2004 Assessment became final and executory, and is not within the exclusive appellate jurisdiction of the Court."[8]

On May 21, 2015, petitioner filed the instant Petition for Review.[9] On September 11, 2015, the Court *En Banc* resolved to give due course to the subject Petition and required the parties to submit their memoranda.[10] On October 29, 2015, petitioner filed its Memorandum (for the petitioner).[11] On November 2, 2015 respondent filed a Manifestation and Motion[12] stating that she is adopting the conclusions reached by the Court in Division as part of her Memorandum. On December 28, 2015,[13] the Court *En Banc* issued a Resolution submitting the case for decision.

Hence, this Decision.

THE ISSUE

The main issue to be resolved by the Court *En Banc* is whether the 2004 Tax Assessment in CTA Case No. 8238 has already become final.

THE RULING

The instant Petition is denied.

Petitioner belatedly filed the protest to the FAN; Protest to the PAN cannot be considered as the protest to the FAN; Operation of estoppel on the part of respondent does not lie in this case

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[8] Id., pp. 914-915.
[9] Court *En Banc* Docket, pp. 9-24.
[10] Resolution, Court *En Banc* Docket, pp. 107-108.
[11] Court *En Banc* Docket, pp. 109-122.
[12] Court *En Banc* Docket, pp. 123-124.
[13] Resolution, Court *En Banc* Docket, pp. 128-129.

Petitioner asserts that the CTA has jurisdiction to entertain its Petition in CTA Case No. 8238. The Petition pertinently states:

> "(1) First, **on July 25, 2008**, respondent issued a Preliminary Assessment Notice ('PAN') assessing petitioner for deficiency revenue taxes for taxable year 2004 in the total amount of P4,513,477.44 inclusive of interest. Petitioner received the PAN on August 4, 2008. xxx
>
> (2) Second, **on 21 August 2008** petitioner filed an Administrative Protest dated August 12, 2008 to the Preliminary Assessment Notice (PAN) dated July 25, 2008, disputing and contesting the said assessment for lack of factual and legal basis, and requested that the said assessment be cancelled and set aside. xxx
>
> (3) Third, **on August 21, 2008** (same date petitioner filed the protest to PAN), respondent issued a Formal Assessment Notice (FAN). xxx
>
> (4) Fourth, **on September 29, 2008**, petitioner filed another supporting letter or additional protest letter, xxx
>
> xxx xxx xxx
>
> At this juncture, it is worth to borrow the wordings of respondent in its letter dated November 19, 2008 treating the administrative protest (August 12, 2008) to PAN as administrative protest to FAN.
>
> 'This has reference to your protest letter filed in your behalf by your representative, Bernaldo, Mirador & Directo Law Offices, dated 12 August 2008 but was received by this Office only on 21 August 2008, relative to the Preliminary Assessment Notice (PAN) dated 25 July 2008 which was received by your representative on 04 August 2008. **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.**
>
> xxx xxx xxx'

9. Lastly, respondent having duly recognized the **protest dated August 12, 2008 as petitioner's administrative protest to the Formal Assessment Notice dated August 21, 2008 gave vested right to the petitioner as a taxpayer. Clearly, petitioner's protest was given due course.**"

Petitioner's assertion is unmeritorious.

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

"**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)*

In relation thereto, Section 3.1.2 of Revenue Regulations (RR) No. 12-99 provides:

"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)*

Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.2 of RR No. 12-99, provides that if the taxpayer fails to respond within 15 days from date of receipt of the PAN, the taxpayer shall be considered in default. In which case, a formal letter of demand and assessment notice shall be caused to be issued.

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.

Nevertheless, respondent still considered petitioner's protest to the PAN as against the FAN in arriving at her Final Decision on Disputed Assessment issued on February 7, 2011. In other words, respondent treated petitioner's protest to the PAN as a protest to the FAN, albeit erroneously. In light thereof, can respondent be put in estoppel for treating the protest to the PAN as protest to the FAN?

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.**"*(Emphasis supplied)*

In the old case of *Octavio A. Kalalo v. Alfredo J. Luz,*[14] 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.*,[15] 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** 9r

[14] G.R. No. L-27782, July 31, 1970.
[15] G.R. No. 163583, August 20, 2008.

> **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."[16] *(Emphasis supplied)*

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"[17] 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.

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[16] Id., also citing *Philippine Bank of Communications v. Court of Appeals*, 352 Phil. 1, 9 (1998).
[17] Discussion, Petition for Review, Court En Banc Docket, p. 18.

To conclude, it is worth to reiterate the time-honored principle that taxes are the lifeblood of the government. This principle is the philosophy behind the government's exception, as a rule, from the operation of the principle of estoppel, as explained by the Supreme Court in the old case of *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*,[18] *viz*:

> "Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel."

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[18] G.R. Nos. L-26911 & L-26924, January 27, 1981, citing G.R. No. L-31364, March 20, 1979, 89 SCRA 199.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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