REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHIL FOODS PROPERTIES, INC.,
Petitioner,

CTA CASE NO. 8185

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x ---x

PHIL. FOODS PROPERTIES, INC.,
Petitioner,

CTA CASE NO. 8238

Members:

-versus-

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 16 2015
9:42 a.m.

x --- x

AMENDED DECISION

BAUTISTA, J.

For resolution are:

1. Respondent's "Motion for Partial Reconsideration" filed by registered mail on December 18, 2014;

2. Petitioner's "Motion for Reconsideration" filed on December 22, 2014;

3. Petitioner's "Comment/Opposition (to Respondent's Motion for Partial Reconsideration)" filed on February 9, 2015; and

4. Respondent's "Motion to Admit Comment/Opposition (To Petitioner's Motion for Reconsideration" with attached "Comment/Opposition (To Petitioner's Motion for Reconsideration)" filed on February 18, 2015.

In respondent's "Motion to Admit Comment/Opposition (To Petitioner's Motion for Reconsideration" with attached "Comment/Opposition (To Petitioner's Motion for Reconsideration)," she prays that the attached "Comment/Opposition (To Petitioner's Motion for Reconsideration)" be admitted to form part of the records of the instant case.

In the interest of justice and equity, respondent's "Motion to Admit Comment/Opposition (To Petitioner's Motion for Reconsideration" with attached "Comment/Opposition (To Petitioner's Motion for Reconsideration)" is hereby **GRANTED**. Accordingly, the attached "Comment/Opposition (To Petitioner's Motion for Reconsideration)" is hereby **ADMITTED**.

Considering that respondent's "Comment/Opposition (To Petitioner's Motion for Reconsideration)" is now admitted, the Court shall now resolve the parties respective Motions.

On December 3, 2014, the Court promulgated a Decision. The dispositive portion of the Decision 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 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 National Internal Revenue Code, as amended, ("Tax Code")], computed as follows:

Type of Tax	Basic Deficiency	25% Surcharge	Total
Value Added Tax	Php182,064.78	Php182,064.78	Php364,129.56
Expanded Withholding Tax	163,090.00	40,772.50	203,862.50
			Php567,992.06

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(C) of the [Tax Code]:

i. On the basic deficiency [Value-Added Tax] of Php182,064.78 computed from January 25, 2007 until full payment thereof;

ii. On the basic deficiency [Expanded Withholding Tax] of Php163,090.00 computed from January 15, 2007 until full payment thereof; and

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of Php567,992.06 representing deficiency Value-Added Tax and Expanded Withholding Tax, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from November 5, 2010 until full payment thereof, pursuant to Section 249(C) of the [Tax Code].

SO ORDERED."

Respondent's Arguments

Respondent, in her "Motion for Partial Consideration," avers that the Court inadvertently interchanged CTA Case No. 8238 and CTA Case No. 8185 in the dispositive portion of the Decision. In the "body" of the Decision, respondent alleges that CTA Case No. 8238 was found by the Court to be filed out of time. While in the dispositive portion of the Decision, the Court partially granted CTA Case No. 8238. Therefore, respondent prays that the necessary corrections be made for the reference of both parties.

In her "Comment/Opposition (To Petitioner's Motion for Reconsideration)," respondent alleges that petitioner's arguments in its "Motion for Reconsideration" are mere repetition and reiteration of the arguments raised in CTA Case No. 8238, which were already ruled upon by the Court, and thus merely a *pro forma* motion which warrants denial for lack of jurisdiction.

Apropos to CTA Case No. 8185, respondent maintains that the interest expense in the amount of Six Million Eight Hundred Eighty-Six Thousand Five Hundred Seven Pesos (PhP6,886,507.00) should be disallowed, as petitioner failed to present any official receipt in support of its claim as prescribed in Sections 3 and 4 of Revenue Regulations ("RR") No. 13-2000[1]; and the Supreme Court decision in ***H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue***[2] ("*Tambunting Case*").

Respondent further maintains that the Net Operating Loss Carry-Over ("NOLCO"), Amount Credit Forward to Succeeding Year, and Minimum Corporate Income Tax ("MCIT") amounting to Four Hundred Twenty-Four Thousand Two Hundred Seventy-Eight Pesos (PhP424,278.00), Two Million Four Hundred Ninety-Four Thousand Eight Hundred Nineteen Pesos (PhP2,494,819.00), and One Hundred Thirty-Four Thousand Eight Hundred Fifteen Pesos (PhP134,815.00), respectively, should be disallowed considering that the tax benefit of these items have been carried forward to the succeeding years, and accordingly the above amounts should be added back to arrive at petitioner's taxable income for taxable year 2006.

Petitioner's Arguments

In petitioner's "Motion for Reconsideration," it alleges that CTA Case No. 8238 was timely filed as petitioner complied with Section 228 of the Tax Code, therefore within the purview of the jurisdiction of the Court. While for CTA Case No. 8185, petitioner requests the Court to peruse the mathematical computation of the total amount of deficiency

[1] November 20, 2000.
[2] G.R. No. 173373, July 29, 2013, 702 SCRA 397.

taxes *i.e.* Value-Added Tax ("VAT") and Expanded Withholding Tax ("EWT") for the taxable year 2006 in the dispositive portion of the Decision dated December 3, 2014 for two (2) reasons. First, the "body" of the Decision states that the deficiency EWT is in the amount of PhP16,309.00, whereas the dispositive portion is in the amount of PhP163,090.00. Second, the 25% surcharge as prescribed in Section 248(A)(3) of the Tax Code was computed at 100% on the deficiency VAT.

For the purpose of clarity, the Court deems it best to discuss the parties' assertions on a per assessment basis, and thereafter to rule on the alleged discrepancies in the dispositive portion of the Decision dated December 3, 2014.

CTA CASE NO. 8238 (Tax Assessment for Taxable Year 2004)

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:

> "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
>
> **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 xxx xxx" (Emphasis ours)

The records of the case establish that the Formal Assessment Notice ("FAN") dated August 21, 2008[3] was received by petitioner on August 22, 2008.[4] 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.

CTA CASE NO. 8185 (Tax Assessment for Taxable Year 2006)

Interest Expense

For ease of reference, the Court reproduces Sections 3 and 4 of RR No. 13-2000:

> "Section 3. Requisites for Deductability of Interest Expense. - In general, subject to certain limitations, the following are requisites for the deductability of interest expense, as follows:
>
> (a) There must be indebtedness;
> (b) There should be an interest expense paid or incurred upon such indebtedness;
> (c) The indebtedness must be that of the taxpayer;
> (d) The indebtedness must be connected with the taxpayers trade, business or exercise of profession;
> (e) The interest expense must have been paid or incurred during the taxable year;
> (f) The interest must have been stipulated in writing;
> (g) The interest must be legally due;
> (h) The interest payment arrangement must not be between related taxpayers as mandated in Sec. 34(B)(2)(b), in relation to Sec. 36(B), both of the Tax Code of 1997;
> (i) The interest must not be incurred to finance petroleum operations; and,

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[3] *Exhibit* "27."
[4] *Exhibit* "27-D."

(j) In case of interest incurred to acquire property used in trade, business or exercise of profession, the same was not treated as a capital expenditure.

SECTION 4. Rules on the Deductibility of Interest Expense. —

(a) General Rule. — In general, the amount of interest expense paid or incurred within a taxable year on indebtedness in connection with the taxpayer's trade, business or exercise of profession shall be allowed as a deduction from the taxpayer's gross income.

(b) Limitation. — The amount of interest expense paid or incurred by a taxpayer in connection with his trade, business or exercise of a profession from an existing indebtedness shall be reduced by an amount equal to the following percentages of the interest income earned which had been subjected to final withholding tax depending on the year when the interest income was earned, viz:

Forty-one percent (41%) beginning January 1, 1998;
Thirty-nine percent (39%) beginning January 1, 1999; and
Thirty-eight percent (38%).beginning January 1, 2000 and thereafter.

This limitation shall apply regardless of whether or not a tax arbitrage scheme was entered into by the taxpayer or regardless of the date when the interest bearing loan and the date when the investment was made for as long as, during the taxable year, there is an interest expense incurred on one side and an interest income earned on the other side, which interest income had been subjected to final withholding tax. This rule shall be observed irrespective of the currency the loan was contracted and/or in whatever currency the investments or deposits were made.

Illustration: Supposing on January 15, 1998, Company A, who has a deposit account with BCD Bank, obtained a loan from XYZ Financing Corporation in connection with the operation of its business. Assume that

Company A's net income for the year 1998 before the deduction of the interest expense amounted to P1,000,000. For the year 1998, the interest income it derived from the said deposit with BCD Bank amounted to P180,000 on which a final tax of P36,000 had been withheld. Its interest expense on the loan obtained from XYZ Financing Corporation during the same year amounted to P150,000.

Under this illustration, the deductible interest expense, the taxable income and the income tax due of Company A shall be computed as follows:

1998	
Net income before interest expense	P[hP]1,000,000
Less: Interest expense	P150,000
Less: 41% of interest income from deposit (41% x P180,000)	73,800
	- - - -
Deductible interest expense	76,200
	- - - -
Taxable income	P[hP]923,800
	- - - -
Income tax due for taxable year 1998 (34%)	P[hP]314,092
	========

(c) Interest on Unpaid Taxes. — Provisions of Sec. 4(b) hereof to the contrary notwithstanding, interest incurred or paid by the taxpayer on all unpaid business-related taxes shall be fully deductible from gross income and shall not be subject to the limitation on deduction heretofore mentioned. Thus, such interest expense incurred or paid shall not be diminished by the percentage of interest income earned which had been subjected to final withholding tax.

(d) Other cases where interest expense is not deductible from gross income. — No interest expense shall be allowed as deduction from gross income in any of the following cases:

(1) If within the taxable year, an individual taxpayer reporting income on the cash basis incurs an indebtedness on which an interest is paid in advance through discount or otherwise: Provided, That such interest shall be allowed as a deduction in

the year the indebtedness is paid: Provided, further, That if the indebtedness is payable in periodic amortization, the amount of interest which corresponds to the amount of the principal amortized or paid during the year shall be allowed as deduction in such taxable year.

Illustration: Mr. Cruz, a self-employed individual, consistently employs the cash-basis accounting method in keeping his books of accounts. Assuming that on January 1, 1998, he contracted a loan of P1,000,000 from XYZ Bank for use in his business operations. Terms: Payable in two (2) years at 15% interest per annum, payable in advance. On January 1, 1998, he received from the bank the proceeds of his loan in the sum of P700,000, net of interest paid in advance in the amount of P300,000.

In general, the interest expense shall be taken for the taxable year in which "paid or incurred" or "paid or accrued" depending upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income, the deduction should be taken as of a different period. Thus, a self-employed individual is allowed to deduct from his gross income the entire amount of interest expense actually paid during the taxable year. However, if the interest expense is paid in advance and the accounting method used by the self-employed individual is the cash-basis accounting method, such interest expense paid in advance shall only be allowed as deduction in the year when he has fully paid his liability. So that if the said debtor has fully paid his loan as of the end of the taxable year 1999, his interest expense paid in advance on January 1, 1998 in the amount of P300,000 shall only be allowed as deduction from his gross income in the taxable year 1999.

On the other hand, even if the interest expense is paid in advance but the indebtedness is payable in periodic amortization, the amount of interest expense which corresponds to the amount of the principal amortized or paid during the respective years 1998 and 1999 shall be allowed as deduction in such respective taxable years.

(2) If both the taxpayer and the person to whom the payment has been made or is to be made are persons specified under Sec. 36(B) of the Tax Code of 1997, viz:

(i) Between members of a family. For purposes of this paragraph, the family of an individual shall include only his brothers and sisters (whether by the whole or half-blood), spouse, ancestors and lineal descendants; or

(ii) Between an individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly and indirectly, by or for such individual; or

(iii)Between two corporations more than fifty percent (50%) in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual; or

(iv)Between the grantor and a fiduciary of any trust; or

(v) Between the fiduciary of a trust and the fiduciary of another trust if the same person is a grantor with respect to each trust; or

(vi)Between a fiduciary of a trust and a beneficiary of such trust.

(3) If the indebtedness on which the interest expense is paid is incurred to finance petroleum exploration in the Philippines. The non-deductible interest expense herein referred to pertains to interest or other consideration paid or incurred by a Service Contractor engaged in the discovery and production of indigenous petroleum in the Philippines in respect of the financing of its

> petroleum operations, pursuant to Section 23 of P.D. No. 8, as amended by P.D. No. 87, otherwise known as "The Oil Exploration and Development Act of 1972."
>
> (e) Optional treatment of interest expense on capital expenditure. – At the option of the taxpayer, interest expense on a capital expenditure incurred to acquire property used in trade, business or exercise of a profession may be allowed as a deduction in full in the year when incurred, the provisions of Sec. 36 (A)(2) and (3) of the Tax Code of 1997 to the contrary notwithstanding, or may be treated as a capital expenditure for which the taxpayer may claim only as a deduction the periodic amortization of such expenditure."

Nowhere in the above reproduction on which respondent confidently grounds his argument does the words **"official receipt"** appear. Consequently, there is no basis whatsoever to respondent's claim that Sections 3 and 4 of RR No. 13-2000 require an official receipt to substantiate a deduction of interest expense.

Furthermore, the reliance of respondent of the case of <u>*Tambunting Case*</u>, citing the ***Commissioner of Internal Revenue vs. Isabela Cultural Corporation***[5] ("<u>*ICC Case*</u>") is misplaced. The Supreme Court stated:

> "**<u>The requisites for the deductibility of ordinary and necessary trade, business, or professional expenses, like expenses paid for legal and auditing services</u>**, are: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) **<u>it must be supported by receipts, records or other pertinent papers</u>**." (Emphasis ours)

Clearly, the issue in both the <u>*Tambunting Case*</u> and the <u>*ICC Case*</u> refers to the deductibility of ordinary and necessary expenses and not interest expense.

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[5] G.R. No. 172231, February 12, 2007, 515 SCRA 556.

Therefore, the Court finds no reversible error in ruling that petitioner's claim for interest expense has complied with Sections 3 and 4 of RR No. 13-2000.

Net Operating Loss Carry-Over, Amount Credit Forward to Succeeding Year, and Minimum Corporate Income Tax

The respondent seems to have mistaken NOLCO as a reduction of income that if added back will result to a new taxable income figure. It must be stressed that the loss referred to is an excess of the itemized deduction over the gross income which can be used as a deduction from taxable income for the succeeding three (3) years, pursuant to Section 34(D)(3)[6] of the Tax Code.

The same rule applies to the items of the assessment - Amount Credit Forward to Succeeding Year and MCIT, which refer to an excess of EWT and an excess in minimum corporate income tax over the normal income tax, respectively. Pursuant to Section 2.58.3 of RR No. 2-98 and Section 27(E)(2) of the Tax Code, the aforementioned items shall automatically be allowed as credit against normal income tax for succeeding years.

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[6] D) Losses. -
Section 34. Deduction from Gross Income. -

> (1) In General. - Losses actually sustained during the taxable year and not compensated for by insurance or other forms of indemnity shall be allowed as deductions:
>
> xxx xxx xxx
>
> (3) Net Operating Loss Carry-over. - **The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss**: Provided, however, That any net loss incurred in a taxable year during which the taxpayer was exempt from income tax shall not be allowed as a deduction under this Subsection: Provided, further, That a net operating loss carry-over shall be allowed only if there has been no substantial change in the ownership of the business or enterprise in that -
>
> xxx xxx xxx

For the benefit of petitioner and respondent, below is a table which summarizes the concepts – NOLCO, MCIT, and Amount Credit Forward to Succeeding Year:

	NOLCO	**MCIT**	**AMOUNT CREDIT FORWARD TO SUCCEEDING YEAR**
Basis	Section 34(D)(3) of the Tax Code	Section 27(E)(2) of the Tax Code	Section 2.58.3 of RR No. 2-98
Type of Excess	Itemized Deduction over Gross Income	Minimum Corporate Income Tax over the Normal Income Tax	EWT
Excess Applied On	Succeeding three (3) years	Succeeding three (3) years	Succeeding taxable quarters or years

Incontestably from the above-table, the items of the assessment refers to an **"excess"** *i.e.* loss, difference in minimum corporate income tax over normal income tax, and EWT, which are to be **carried over to succeeding years**. Respondent cannot therefore argue the disallowance of these items on the basis that any tax benefit derived by petitioner from the aforementioned items redound to the succeeding calendar year ending December 31, 2007, a taxable year not covered by Tax Verification Notice No. 00050351[7].

<u>Discrepancies in the Dispositive Portion of the Decision</u>

It appears that there is a discrepancy between the "body" and dispositive portion of the Decision as to the amount of deficiency EWT due. In the "body," the amount is PhP16,309.00. While in the dispositive portion, the amount of deficiency EWT due is PhP163,090.00.

[7] Examine/audit petitioner's internal revenue taxes for the period from January 1, 2006 to December 31, 2006.

In the case of *Antonio L. Castelo vs. Court of Appeals*[8] ("Castelo Case"), the Supreme Court had the occasion to rule that when the dispositive portion of a judgment contains a clerical error arising from inadvertent omission, the error can be clarified by reference to the "body" of the Decision, to wit:

> "The established doctrine is that when the dispositive portion of a judgment, which has become final and executory, contains a clerical error or an ambiguity arising from an inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself. In Reinsurance Company of the Orient, Inc. v. Court of Appeals, the Court surveyed the applicable case law in the following manner:
>
>> It is true that even a judgment which has become final and executory may be clarified under certain circumstances. The dispositive portion of the judgment may, for instance, contain an error clearly clerical in nature (perhaps best illustrated by an arithmetical computation) or an ambiguity arising from inadvertent omission, which error may be rectified or ambiguity clarified and the omission supplied by reference primarily to the body of the decision itself. Supplementary reference to the pleadings previously filed in the case may also be resorted to by way of corroboration of the existence of the error or of the ambiguity in the dispositive art of the judgment. In Locsin, et al. v. Paredes, et al. (63 Phil. 87 [1936]), this Court allowed a judgment which had become final and executory to be clarified by supplying a word which had been inadvertently omitted and which, when supplied, in effect changed the literal import of the original phraseology:" (Emphasis ours)

Relying on the above-quoted ruling, petitioner's basic deficiency EWT for taxable year 2006 in the dispositive portion of the Decision is now amended to the amount of PhP16,309.00, as provided for in the "body" of the Court's Decision dated December 3, 2014.

[8] G.R. No. 96372, May 22, 1995, 244 SCRA 180.

Furthermore, it appears in the dispositive portion that the 25% surcharge on deficiency VAT as prescribed in Section 248(A)(3) of the Tax Code was computed at 100%.

Section 248(A)(3) of the Tax Code states:

"SECTION 248. Civil Penalties. -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

xxx xxx xxx

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

xxx xxx xxx"

(Emphasis ours)

Clearly, the applicable surcharge in the instant case is 25% of the deficiency VAT of PhP182,064.78 or PhP45,516.195.

Therefore, in the dispositive portion of the Decision, the mathematical computation of the total deficiency tax due for the year ended December 31, 2006, is as follows:

TAX TYPE	**BASIC DEFICIENCY**	**25% SURCHARGE**	**TOTAL**
VAT	182,064.78[9]	45,516.195	227,580.975
EWT	16,309.00[10]	4,077.25	20,386.25
TOTAL			**PhP247,967.25**

Finally, it appears that CTA Case No. 8238 and CTA Case No. 8185 have been inadvertently interchanged in the "body" and dispositive portion of the Decision. In the "body" of the Decision, the Court ruled:

[9] Decision, page 28.
[10] *Id.*

"Thus, in the case docketed as CTA Case No. 8185 ("2006 Assessment"), when respondent issued the FDDA on September 27, 2010, petitioner was correct in bringing up the disputed assessment to the Court.

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 [Tax Code] 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 under the law.

That being said, there is no need to further discuss the other issues raised in the 2004 Assessment. The Court shall now proceed with the issues relating to the 2006 Assessment."

While the dispositive portion of the Decision ruled:

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

Applying the principle held by the Supreme Court in the *Castelo Case*, which states that if there is ambiguity between the dispositive portion of the decision and the "body," reference shall be made to the "body" of the decision.

Therefore, after referring to the "body" of the Decision, the dispositive portion is now rectified to state that "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.**"

In sum, the Court finds no reversible error in the conclusion it reached in its Decision dated December 3, 2014 except that it committed an inadvertent mistake in the dispositive portion by interchanging CTA Case Nos. 8238 and 8185; typographically typing the amount PhP163,090.00 instead of PhP16,309.00 as petitioner's basic deficiency EWT; and in the computation of 25% surcharge on deficiency VAT for taxable year 2006.

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:

> "**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[11]	45,516.195	227,580.975
EWT	16,309.00[12]	4,077.25	20,386.25
TOTAL			**PhP247,967.25**

> In addition, petitioner is liable to pay:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(C) of the Tax Code:

[11] Decision, page 28.
[12] *Id.*

i. On the basic deficiency Value-Added Tax of PhP182,064.78 computed from January 25, 2007 until full payment thereof;

ii. On the basic deficiency Expanded Withholding Tax of PhP16,309.00 computed from January 15, 2007 until full payment thereof; and

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of PhP247,967.25 representing deficiency Value-Added Tax and Expanded Withholding Tax, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from November 5, 2010 until full payment thereof, pursuant to Section 249(C) of the Tax Code.

SO ORDERED."

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(*TOOK NO PART*)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice