REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DENNIS M. YAP,
Petitioner,

CTA EB NO. 2272
(CTA Case No. 10020)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

\- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 15 2021 2:47 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) filed by petitioner Dennis M. Yap (**petitioner/Yap**).

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1 Filed on 30 June 2020, *Rollo*, pp. 1-140, with annexes.

2 **SEC 3**. *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

He seeks the reversal of the resolutions of the Court's First Division[3] in CTA Case No. 10020, entitled *Dennis M. Yap v. Bureau of Internal Revenue*, to wit:

1. Resolution dated 14 October 2019[4], dismissing CTA Case No. 10020 for lack of jurisdiction; and,

2. Resolution dated 20 February 2020[5], denying petitioner's Motion for Reconsideration (**MR**) for lack of merit.

The antecedent facts follow.

Petitioner is a Filipino citizen, of legal age, and with postal address at National Highway, Sillawit, Cauayan City, Isabela. He is the proprietor of JAPI Travellers Hotel and Restaurant (**JAPI Hotel**) located at National Highway, Sillawit, Cauayan City, Isabela.

Respondent, on the other hand, is the Bureau of Internal Revenue (**respondent/BIR**) represented by the duly appointed Commissioner of Internal Revenue (**CIR**), with office address at BIR Building, Diliman, Quezon City.

On 13 June 2014, petitioner allegedly received three (3) Letters of Authority (**LOAs**), authorizing the examination of his books of accounts and other accounting records for taxable years (**TYs**) 2011[6], 2012[7] and 2013[8], respectively.

On 13 February 2015, petitioner received a copy of the Preliminary Assessment Notice (**PAN**) dated 04 February 2015[9], with attached Details of Discrepancies, assessing him for deficiency income tax (IT) and value-added tax (VAT) for TY 2011 in the aggregate

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[3] The First Division is composed of Hon. Presiding Justice Roman G. Del Rosario, as Chairperson, Hon. Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Hon. Associate Justice Catherine T. Manahan, as Members.
[4] Annex "P-20", *Rollo*, pp. 126-134.
[5] Annex "P-22", id., pp. 138-140.
[6] LOA No. 015-2014-00000018, Annex "P-2", id., p. 21.
[7] LOA No. 015-2014-00000017, Annex "P-3", id., p. 23.
[8] LOA No. 015-2014-00000016, Annex "P-4", id., p. 25.
[9] Annex "P-5", id., pp. 27-30.

amount of ₱414,778.83. Then Officer-In-Charge Regional Director Marina C. De Guzman (**OIC-RD De Guzman**) signed the PAN.

On 14 April 2015, petitioner also received copies of two (2) PANs[10], both dated 06 April 2015 and each with attached Details of Discrepancies, assessing him for deficiency IT and VAT in the aggregate amount of ₱1,537,600.23 for TY 2012 and for deficiency IT, VAT and expanded withholding tax (**EWT**) in the aggregate amount of ₱2,998,493.30 for TY 2013. These were also signed by then OIC-RD De Guzman.

On 25 June 2015, petitioner received three (3) Formal Letters of Demand[11] (**FLDs**), all dated 22 June 2015 and each with attached Details of Discrepancies and Assessment Notices, finding him liable for deficiency IT and VAT for TYs 2011, 2012 and 2013 in the total amounts of ₱430,127.17, ₱1,571,746.21 and ₱3,042,204.06, respectively.

On 24 July 2015, petitioner filed three (3) Legal Petition Notices[12], all dated 27 June 2015, requesting for reinvestigation in relation to the FLDs and Assessment Notices he received on 25 June 2015.

On 22 September 2015 or within the alleged 60-day period to submit supporting documents, petitioner filed three (3) Legal Petition Notices[13], all dated 16 September 2015, supplementing his previous request for reinvestigation and transmitting relevant documents such as vouchers, receipts, payroll, checks and bank deposit slips in support thereof.

Subsequently, on 10 July 2018, petitioner received a copy of the Preliminary Collection Letter[14] (**PCL**) dated 09 July 2018. Then BIR Collection Division Chief Daisy W. Quirino (**Collection Chief Quirino**) signed the PCL. In response thereto, petitioner filed another Legal Petition Notice[15] dated 13 July 2018, informing respondent about his pending request for reinvestigation with supporting documents.

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10 Annexes "P-6" and "P-7", id., pp. 31-38.
11 Annexes "P-8", "P-9" and "P-10", id., pp. 39-56.
12 Annexes "P-11", "P-12" and "P-13", id., pp. 57-76.
13 Annexes "P-14", "P-15" and "P-16", id., pp. 77-104.
14 Annex "P-17", id., pp. 105-108.
15 Annex "P-18", id., pp. 109-116.

On 31 January 2019, petitioner allegedly received a copy of respondent's Warrant of Distraint and/or Levy (**WDL**) No. 2019-00006 dated 30 January 2019.

On 01 February 2019, and within thirty (30) days from receipt of the WDL, petitioner filed a Petition for Review[16] before the First Division docketed as CTA Case No. 10020, praying for the Court to: (1) lift respondent's WDL; (2) declare void respondent's PANs, FLDs and PCL; and, (3) issue an order to suspend the collection of taxes.

In the Resolution dated 14 October 2019[17], the Court's First Division dismissed the prior Petition for Review. It ruled that the PCL is respondent's final decision on petitioner's protest against the three (3) FLDs with attached Assessment Notices and thus, the 30-day period to file an appeal should be reckoned from petitioner's receipt of the PCL (*i.e.*, on 10 July 2018). This means that petitioner had only until 09 August 2018 within which to appeal respondent's final decision before the Court. Since the prior Petition for Review was filed only on 01 February 2019, the Court's First Division concluded that it has failed to acquire jurisdiction over the said petition as the assessments had already become final, executory and demandable.

Aggrieved, on 04 November 2019, petitioner filed his MR[18] on the above Resolution but the same was denied in the similarly assailed Resolution dated 20 February 2020[19].

Still undaunted, petitioner filed the present Petition for Review on 30 June 2020.[20]

After the filing of respondent's Comment (On Petition for Review dated 30 June 2020) on 28 August 2020[21], the case was deemed submitted for decision on 16 September 2020.[22]

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[16] Annex "P-19", id., pp. 117-125.
[17] Supra at note 4.
[18] Annex "P-21", *Rollo*, pp. 135-137.
[19] Supra at note 5.
[20] Supra at note 1.
[21] *Rollo*, pp. 144-154.
[22] Id., pp. 156-157.

Before Us, petitioner assigns the following errors to the First Division's actions:[23]

I.
WHETHER THE FIRST DIVISION ERRED IN DISMISSING THE PETITION ON JURISDICTIONAL GROUND; AND,

II.
WHETHER RESPONDENT BUREAU OF INTERNAL REVENUE'S ASSESSMENTS AGAINST PETITIONER WERE PROPER.

In support of his petition, petitioner reiterates his position that the PCL cannot be considered as a final demand or decision appealable to the Court. According to petitioner, the wordings of the PCL, taken as a whole, do not state in clear and unequivocal language that such letter already constitutes respondent's final determination of the disputed assessment.

Citing the Court *En Banc*'s previous rulings in *Jowelle's Autoparts, Inc. v. Bureau of Internal Revenue, represented by the Regional Director, Revenue District 15*[24] (**Jowelle's**) and *Commissioner of Internal Revenue v. Mannasoft Technology Corporation*[25] (**Mannasoft**) where it was ruled that the 30-day period to appeal before the Court is reckoned from petitioner's receipt of the WDL, petitioner insists that the reckoning point in this case should be the date of his receipt of the WDL, that is, on 31 January 2019. Since his petition was filed on 01 February 2019 or within the 30-day period counting from 31 January 2019, petitioner claims that his petition should be deemed filed on time and is, thus, within the Court's First Division's jurisdiction.

Petitioner further claims that respondent issued the PCL without making prior valid assessments for TYs 2011, 2012 and 2013 and this amounts to a violation of his right to due process of law. He then argues that the PCL cannot be considered as basis in enforcing collection as the same is void and cannot be given any effect.

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23 Assignment of Errors, Petition for Review, id., p. 6.
24 CTA EB NO. 1594 (CTA Case No. 9333), 02 April 2018.
25 CTA EB NO. 1637 (CTA Case No. 8745), 19 June 2018.

On the other hand, respondent agrees with the ruling of the Court's First Division that the prior Petition for Review was filed out of time as petitioner should have filed the same within 30 days from receipt of the PCL.

Contrary to petitioner's contention that the Court *En Banc*'s rulings are binding precedents, respondent points out that the doctrine of *stare decisis* only applies to the rulings established in decisions of the Supreme Court. Even assuming that the doctrine of *stare decisis* is applicable, respondent still maintains that the Court *En Banc*'s rulings cannot be applied on account of the differences in factual circumstances.

Respondent likewise contends that when petitioner asked for this Court to declare void the PANs, FLDs and PCL, he thereby questioned the validity of the assessments itself. However, this recourse has already been foreclosed due to the belated filing of his prior Petition for Review.

We rule below.

After an assiduous review of the records and the arguments of both parties, the Court *En Banc* finds no cogent reason to reverse the assailed Resolutions of the First Division which dismissed the prior Petition for Review for being filed out of time.

At the outset, it bears emphasis that the Court of Tax Appeals (**CTA**), being a court of special and limited jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[26]

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence

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[26] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[27]

Sections 7(a)(1) and (2), and 11 of Republic Act (**RA**) No. 1125[28], as amended by RA 9282[29], confers jurisdiction to the Court in Division relative to decisions and inactions of respondent, and states the manner of appealing the same, to wit:

> ...
> **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 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 provides a specific period of action, in which case the inaction shall be deemed a denial;
> ...
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> **Sec. 11.** *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**[30]
> ...

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27 *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, 17 June 2015.

28 AN ACT CREATING THE COURT OF TAX APPEALS.

29 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

30 Italics in the original text and emphasis supplied.

Based on the foregoing provisions, the Court in Division has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within 30 days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

As regards the period fixed by law for action in case of disputed assessments, Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides, in part, as follows:

> ...
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> **Sec. 228.** *Protesting of Assessment.* — ...
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> ...
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> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> ...
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> **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.**
>
> **<u>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</u>, 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, <u>or from the lapse of the one hundred eighty (180)-day period</u>; otherwise, the decision shall become final, executory and demandable.**[31]
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> ...

Following the aforecited provision, after the filing of a protest against a tax assessment, the period of action on the part of respondent is one hundred eighty (180) days from the submission of documents which must be done within sixty (60) days from the filing of the protest.

[31] Emphasis and underscoring supplied.

On the other hand, Section 3.1.4 of Revenue Regulations (**RR**) 12-99[32], as amended by RR 18-2013[33], implementing Section 228 of the NIRC of 1997, as amended, above, clarifies, *inter alia*, as to when the 180-day period commences, to wit:

> ...
>
> 3.1.4 ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) 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.*
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> ...
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting 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.** The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration**. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by

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32 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.*

33 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

<u>If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation</u>, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, <u>by the Commissioner</u>, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

<u>If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest</u>, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA

within thirty (30) days after the receipt of a copy of such decision.

<u>It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer</u> to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[34]

...

Based on the foregoing provisions and as summarized in *Segaya/Les Engineering and Construction v. Commissioner of the Bureau of Internal Revenue*[35], the following rules are established, particularly on the periods within which a taxpayer may file an appeal before the Court in Division, *viz*:

...

1. A protest may either be a *request for reconsideration* or a *request for reinvestigation.*

2. For *requests for reinvestigation*, the concerned taxpayer must, within sixty (60) days from the filing thereof, submit all relevant supporting documents; otherwise, the assessment shall become final. This 60-day period is not applicable to *requests for reconsideration*.

3. If the protest, which may either be a *request for reconsideration* or *request for reinvestigation*, is denied, in whole or in part, by the <u>respondent's duly authorized representative</u>, the concerned taxpayer has two (2) options:

    (i) Appeal to this Court within thirty (30) days from date of receipt of the said decision; or
    (ii) Elevate the said protest through a *request for reconsideration* to respondent, as an administrative appeal, within thirty (30) days from date of receipt of the said decision.

4. **If, however, the same protest is not acted upon by <u>respondent's duly authorized representative</u> within one**

[34] Emphasis and underscoring supplied.
[35] CTA Case No. 9875, 26 February 2021.

hundred eighty (180) days counted from the date of filing of the protest in case of a *request for reconsideration*; or from the date of submission by the taxpayer of the required documents [which must be made within sixty (60) days from the date of the filing of the protest] in case of a *request for reinvestigation*, the concerned taxpayer has also two (2) options:

(i) **Appeal to this Court within thirty (30) days after the expiration of the 180-day period; or**

(ii) **Await the final decision of <u>respondent's duly authorized representative</u> on the disputed assessment.**

5. If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by <u>respondent himself</u>, the concerned taxpayer must appeal such denial to this Court within thirty (30) days from the date of receipt of the decision; otherwise, the assessment shall become final, executory and demandable. A *motion for reconsideration* of respondent's denial of the said protest or administrative appeal, as the case may be, does *not* toll the said thirty (30)-day period to appeal to this Court.

6. If the same protest or administrative appeal is not acted upon by <u>respondent himself</u> within one hundred eighty (180) days **counted from the date of filing of the protest**, the concerned taxpayer has two (2) options:

   (i) Appeal to this Court within thirty (30) days after the expiration of the said 180-day period; or

   (ii) Await the final decision of respondent on the disputed assessment, and appeal such final decision to this Court within thirty (30) days after the receipt of a copy of such decision.

7. <u>In case of inaction on the protested assessment within the 180-day period, the options of the taxpayer</u> to either: (a) file a petition for review with this Court within thirty (30) days after the expiration of the 180-day period; or (b) await the final decision of respondent or his duly authorized representative on the disputed assessment, and appeal such final decision to this Court within thirty (30) days after receipt of a copy of such decision, <u>are mutually exclusive and the resort to one bars the application of the other</u>.[36]

...

[36] Emphasis, italics and underscoring in the original text, and supplied.

In this case, the records show that, on 24 July 2015, petitioner filed three (3) protests[37] (all captioned as "Legal Petition Notice") against respondent's FLDs and Assessment Notices covering deficiency IT and VAT for TYs 2011, 2012 and 2013. Such protests were, in substance, requests for reinvestigation.

On 22 September 2015, which is the last day of the 60-day period fixed by law, petitioner submitted the relevant supporting documents in support of his requests for reinvestigation.[38] Hence, applying the aforecited rules, respondent's duly authorized representative has 180 days from the submission of documents or until 20 March 2016 to act on petitioner's protests or requests for reinvestigation.

The records also show that the 180-day period lapsed without any action on the part of respondent's duly authorized representative. Pursuant to the abovecited provisions of RR 12-99[39], as amended by RR 18-2013[40], petitioner had thus been left with the following options, to wit: (1) appeal to the Court in Division within 30 days from 20 March 2016, which is the last day of the 180-day period; or, (2) await the final decision on disputed assessment (FDDA) of respondent's authorized representative and appeal such final decision to the Court in Division within 30 days from receipt of a copy thereof.

Since petitioner did not avail of his first option to file an appeal before the Court in Division within 30 days from the lapse of the 180-day period, it can thus be said that petitioner eventually waited for the final decision of respondent's duly authorized representative on the disputed assessment and he had 30 days from receipt of such final decision within which to appeal the same to the Court in Division.

At this point, it is worth noting that petitioner subsequently received the PCL on 10 July 2018 (signed by respondent's authorized representative, Collection Chief Quirino) or almost three (3) years after the date of submission of petitioner's supporting documents.

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[37] Supra at note 12.
[38] Supra at note 13.
[39] Supra at note 31.
[40] Supra at note 32.

The pivotal issue therefore is whether the PCL qualifies as respondent's duly authorized representative's FDDA which is the decision appealable to the Court in Division.

Petitioner argues that the PCL cannot be construed as an FDDA because it uses the word "requested" which is not similar to a demand. Taken as a whole, the wordings of the PCL do not state in clear and unequivocal language that such is respondent's duly authorized representative's FDDA. Instead, what qualifies as respondent's duly authorized representative's FDDA is the WDL which was issued by the BIR on 31 January 2019. This, according to petitioner, is consistent with the CTA *En Banc*'s rulings in *Jowelle's* and *Mannasoft*.

We disagree.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[41], the Supreme Court has held that the determination of whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter sent to the taxpayer. There, the Supreme Court laid down the rule that the CIR should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment. It held:

> ...
>
> ... we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
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> ...

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41 G.R. No. 148380, 09 December 2005.

A careful scrutiny of the subject PCL could only lead this Court to the conclusion that the same is indeed the final decision that could be the subject of an appeal.

It is noted that, while the subject PCL does not contain the words "final decision", the tenor is unmistakeably one that warned petitioner to settle or pay his tax liabilities; otherwise, respondent would proceed with his administrative summary remedies to ensure collection of the tax liabilities and protect the interest of the government. The "finality" of the latter's decision can also be inferred from the fact that petitioner was similarly warned that his failure to pay the same will result in the accumulation of interest and surcharges.

As also explained by the Supreme Court in *Commissioner of Internal Revenue v. Isabela Cultural Corporation*[42], a final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to an FDDA and is thus appealable to the Court in Division.[43]

Although petitioner invokes the Court *En Banc*'s previous rulings in *Jowelle's* and *Mannasoft*, where it was ruled that the 30-day period to appeal before the Court should be reckoned from petitioner's receipt of the WDL, it must be stated that the rulings of this Court (either acting through one of its divisions or sitting *en banc*) are never binding precedents. By the doctrine of *stare decisis*, only decisions of the Supreme Court are controlling. The Supreme Court in *United Coconut Planters Bank v. Spouses Uy*[44] explains, thus:

> ...
>
> ... It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect. Thus, respondents are correct in contesting the application of the doctrine of *stare decisis* when the CA relied on decisions it had issued.
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> ...

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42 G.R. No. 135210, 11 July 2001.
43 Id.
44 823 Phil. 284 (2018).

Given this Court's finding that the PCL is respondent's duly authorized representative's FDDA, the reckoning point of the 30-day period within which to file an appeal before the Court in Division should be the date of receipt of the PCL (*i.e.*, 10 July 2018) and not the date of receipt of the WDL (*i.e.*, 31 January 2019). Hence, petitioner only had until 09 August 2018 within which to appeal respondent's final decision before the Court in Division.

Considering that petitioner only filed the prior Petition for Review on 01 February 2019 or after the lapse of the 30-day period to file an appeal reckoned from receipt of the PCL, respondent's assessments became final, executory and demandable and thus, the Court's First Division is divested of jurisdiction to review the same.

Having established that the subject PCL is an FDDA, petitioner effectively waived his remedy of appeal before the Court in Division when he opted to file a Legal Petition Notice before respondent (instead of an appeal before the Court in Division within the 30-day reglementary period). Unfortunately for petitioner, the subsequent Legal Petition Notice which he filed on 16 July 2018 (to inform respondent of his pending request for reinvestigation) did not toll the 30-day period to appeal.

Basic is the rule that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[45] It follows then that, before the Court in Division could validly make any finding as regards the validity or correctness of the assessment, it must first be established that the appeal was duly perfected and that the Court in Division validly acquired jurisdiction over the case.

All told, since petitioner's judicial appeal was not timely filed, the First Division never acquired jurisdiction over the case, and thus, properly dismissed the same. The Court sees no relevant need to

[45] *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, 01 July 2015, citing *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, 11 August 2010.

further tackle petitioner's other issues as these will not change the outcome of the present case.

WHEREFORE, premises considered, the instant Petition for Review filed on 30 June 2020 by petitioner Dennis M. Yap is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 14 October 2019 and 20 February 2020, respectively, of the Court's First Division in CTA Case No. 10020, *Dennis M. Yap v. Bureau of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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