REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

B. NEVALGA ENTERPRISES CORP. BY: BENITO B. NEVALGA,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2171
(CTA Case No. 10159)

Present:

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

Promulgated:
FEB 19 2021 11:45am

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner B. Nevalga Enterprises Corp. By: Benito B. Nevalga

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[1] Filed on 18 November 2019, *Rollo*, pp. 4-79, with annexes.

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

(petitioner/B. Nevalga), seeking the reversal of the resolutions of the Court's Third Division[2] in CTA Case No. 10159, entitled *B. Nevalga Enterprises Corp. By: Benito B. Nevalga v. Bureau of Internal Revenue*, to wit:

1. Resolution dated 17 September 2019[3] dismissing *motu proprio* CTA Case No. 10159, for being filed out of time; and,

2. Resolution dated 22 October 2019[4] denying petitioner's Motion for Reconsideration (Re: Resolution dated 17 September 2019), for lack of merit.

The antecedent facts follow.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at B. Nevalga Enterprises Corp. Bldg., National Road, Dita, Sta. Rosa, Laguna.

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

On 03 February 2015, petitioner received a copy of the Preliminary Assessment Notice **(PAN)** dated 17 February 2014[5], with attached Details of Discrepancies for deficiency income tax **(IT)** and value-added tax **(VAT)** for taxable year **(TY)** 2006 in the total amount of ₱11,130,978.82. This was signed by then Assistant Commissioner for

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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.

2 The Third Division is composed of Hon. Associate Justice Erlinda P. Uy, as Chairperson, Hon. Associate Justice Ma. Belen M. Ringpis-Liban and Hon. Associate Justice Maria Rowena Modesto-San Pedro, as Members.

3 Division Docket, pp. 62-65.

4 Id., pp. 82-83.

5 Annexes "C" to "C-2" attached to the Petition for Review, Division Docket, pp. 37-39.

Enforcement & Advocacy Service James H. Roldan (**ACIR Roldan**). Petitioner then filed its Protest[6] against the PAN on 16 February 2015.

Subsequently, on 20 July 2016, petitioner allegedly received a copy of the undated Final Decision on Disputed Assessment[7] (**FDDA**). This was signed by then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**).

On 02 August 2016, petitioner filed its Motion for Reconsideration[8] (**MR**) of the FDDA, which allegedly remained unresolved despite BIR's receipt thereof.

After more than three (3) years or on 16 August 2019, petitioner received from the BIR a letter dated 25 June 2019[9] (**Demand Letter**), wherein the latter ordered petitioner to pay its 2006 deficiency assessments for IT and VAT within ten (10) days from receipt thereof. Otherwise, the case will be forwarded to the ACIR for Collection Service for enforcement of collection through administrative summary remedies.

Claiming that it is entitled to file an appeal with the Court of Tax Appeals (**CTA**) within fifteen (15) days from receipt of the Demand Letter, petitioner filed its Petition for Review[10] before the Court in Division on 03 September 2019. The case was raffled to the Court's Third Division, docketed as CTA Case No. 10159.

In the Resolution dated 17 September 2019[11], the Third Division dismissed *motu proprio* petitioner's Petition for Review for being filed out of time.

Aggrieved, on 08 October 2019, petitioner filed its MR (to the Resolution dated 17 September 2019)[12] contending that: (1) the PAN is invalid as it was issued beyond the three-year prescriptive period;

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6 Annexes "D" to "D-1" attached to the Petition for Review, id., pp. 40-41.
7 Annexes "A" to "A-3" attached to the Petition for Review, id., pp. 32-35.
8 Annexes "E" to "E-2" attached to the Petition for Review, id., pp. 42-44.
9 Annex "B" attached to the Petition for Review, id., p. 36.
10 Id., pp. 10-31.
11 Supra at note 3.
12 Division Docket, pp. 66-80.

(2) there is a pending criminal case against petitioner for alleged failure to present its books of account for the years 2006 to 2010; (3) petitioner has no outstanding internal revenue tax liability *per* Certification from the Revenue District Office (**RDO**); and, (4) the basis of respondent's assessment for alleged deficiency taxes is the purported confidential information from petitioner's former court-appointed receiver, Manuel Villatuya.

Unconvinced of petitioner's arguments, the Third Division denied petitioner's MR in the Resolution dated 22 October 2019[13], stating that there are no legal grounds to reverse its dismissal of the case and that petitioner's MR delves into the merits of the case which is beyond its jurisdiction.

Still undaunted, petitioner filed the present Petition for Review on 18 November 2019.[14]

After the filing of respondent's Comment (Re: Petition for Review dated 17 November 2019) on 31 January 2020[15], the case was deemed submitted for decision on 19 February 2020.[16]

In the present Petition for Review, petitioner raises the following issues:[17]

I.

WHETHER THERE IS LEGAL BASIS FOR THE ISSUANCE OF THE PRELIMINARY ASSESSMENT NOTICE (PAN) BY THE ASSISTANT COMMISSIONER CONSIDERING THAT IT WAS ISSUED AFTER THE THREE-YEAR PRESCRIPTIVE PERIOD AS PROVIDED UNDER THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED;

II.

WHETHER THERE IS LEGAL BASIS FOR THE ISSUANCE OF THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) CONSIDERING THAT IT PROCEEDED FROM A PATENTLY DEFECTIVE PRELIMINARY ASSESSMENT NOTICE (PAN);

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13 Supra at note 4.
14 Supra at note 1.
15 *Rollo*, pp. 96-103.
16 Id., pp. 105-106.
17 Issues, Petition for Review, id., pp. 11-12.

III.
WHETHER THERE IS FACTUAL BASIS FOR THE ASSESSED AMOUNT CONSIDERING THAT THE BUREAU OF INTERNAL REVENUE (BIR) HAS FILED A CRIMINAL CASE FOR THE ALLEGED FAILURE OF PETITIONER TO PRODUCE ITS BOOKS OF ACCOUNTS; and,

IV.
WHETHER THERE IS FACTUAL BASIS FOR THE ASSESSMENT CONSIDERING THAT THE CONFIDENTIAL INFORMANT IS KNOWN TO PETITIONER AND, DESPITE REQUEST, THE ASSISTANT COMMISSIONER DID NOT ALLOW PETITIONER TO CONFRONT SAID INFORMANT.

Essentially, the principal and only issue to be resolved by the Court *En Banc* is - *whether the Court's Third Division erred in dismissing the Petition for Review for lack of jurisdiction.*

We rule below.

After a careful 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 Third Division which dismissed *motu proprio* the original 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.[18] Section 7(a)(1) of Republic Act (**RA**) No. 1125[19], as amended, provides:

...
Sec. 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **<u>Decisions</u>** of the Commissioner of Internal Revenue in cases involving **<u>disputed assessments</u>**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other

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

19 AN ACT CREATING THE COURT OF TAX APPEALS.

> matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]
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> ...

In relation thereto, Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides for the procedure to be observed in issuing and protesting tax assessments. The said provision, in part, reads as follows:

> ...
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> **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: ...
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> ...
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> 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.
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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.
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> **<u>If the protest is denied in whole or in part</u>**, or is not acted upon within one hundred eighty (180) days from submission of documents, **<u>the taxpayer adversely affected by the decision</u>** or inaction **<u>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</u>**.[20]
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> ...

[20] Emphasis and underscoring supplied.

On the other hand, Section 3.1.4 of Revenue Regulations (**RR**) 12-99[21], as amended by RR 18-2013[22], implementing Section 228[23] of the NIRC of 1997, as amended, above, provides:

> ...
>
> 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. ...
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> ...
>
> **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.
>
> 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, 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.

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21 *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.*

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

23 Supra at page 6.

> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, 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.**[24]
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> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[25] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[26], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
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> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.[4] gives a protesting taxpayer like PAGCOR only three options:
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> 1. **If the protest is wholly <u>or</u> partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
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> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.[27]
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules as follows:

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[24] Emphasis and underscoring supplied.
[25] G.R. No. 208731, 27 January 2016; Citation omitted, italics and underscoring in the original text and emphasis supplied.
[26] G.R. No. 221780, 25 March 2019.
[27] Emphasis supplied.

> ...
>
> To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. **A whole or partial denial by the CIR may be appealed to the CTA.** The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[28]
>
> ...

The records show that, on 20 July 2016, petitioner received the undated FDDA[29] which was issued and signed by then Commissioner Henares herself. Denying petitioner's administrative protest, the FDDA indicates that the assessment issued against petitioner has already become final and demandable as petitioner's Protest[30] against the Formal Letter of Demand[31] (**FLD**) (with corresponding Assessment Notices) did not conform to the prescribed procedure in failing to state the facts, the applicable laws, rules and regulation, or jurisprudence on which the protest is based, and thus, deemed null and void. Moreover, the FDDA categorically states that it is the final decision on petitioner' administrative protest.

Pursuant to the rules laid out in RR 12-99, as amended by RR-18-2013, and the decision in *PAGCOR*, the proper remedy for petitioner was to file a Petition for Review before the CTA within 30 days from receipt of the FDDA, or until 19 August 2016. However, instead of appealing to the Court in Division, petitioner opted to file an MR with then Commissioner Henares on 02 August 2016.

As clearly provided for in Section 3.1.4 of RR 12-99, as amended by RR-18-2013 above, petitioner's resort to file an MR with the CIR did not toll the running of the 30-day period to appeal before the CTA. In *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[32] (**Fishwealth**), the Supreme Court held:

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[28] Id.; Emphasis supplied.

[29] Supra at note 7.

[30] *Per* Final Decision on Disputed Assessment (FDDA), petitioner submitted its Protest against the Formal Letter of Demand (FLD) on 03 September 2015. However, such Protest is not mentioned in any of petitioner's pleadings and a copy thereof is not found in the records of the case.

[31] *Per* FDDA, an FLD with corresponding Assessment Notices were issued on 11 August 2015 and received by Ma. Therese M. De Guzman on 26 August 2015. However, the FLD is not mentioned in any of petitioner's pleadings and a copy thereof is not found in the records of the case.

[32] G.R. No. 179343, 21 January 2010.

> ...
>
> In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.
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> Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. **For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.**[33]
>
> ...

In *Fishwealth*, the taxpayer contested the CIR's assessment *via* a letter dated 23 September 2003. The CIR, in turn, issued an FDDA denying the taxpayer's protest which the latter received on 04 August 2005. Instead of elevating its case to the CTA, the taxpayer filed with the CIR a letter of reconsideration on 01 September 2005, which was considered denied due to a Preliminary Collection Letter (**PCL**) issued by the CIR on 06 September 2005. Eventually or on 20 October 2005, the taxpayer filed its Petition for Review with the CTA but the same was dismissed as it was filed beyond the 30-day reglementary period provided for in Section 228 of the NIRC of 1997, as amended, and RR 12-99, as amended by RR 18-2013.

This Court finds petitioner in a similar position as the taxpayer in *Fishwealth*. In relying on the possibility that Commissioner Henares might reconsider her previous decision, petitioner waived its remedy of appeal before the Court in Division. Whether the same be due to inadvertence or purposely resorted to, We cannot overlook the fact that *more than three (3) years* have lapsed from petitioner's receipt of respondent's final decision before it filed an appeal before the Third Division. Considering the amount of time that elapsed, the Third Division's lack of jurisdiction to entertain the original Petition for Review becomes indisputable.

Evidently, petitioner erroneously thought it could still file an appeal within 15 days[34] (instead of 30 days as provided in the aforesaid

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33 Emphasis supplied and underscoring in the original text.

34 Petitioner cited no legal basis for the claimed 15-day period.

law and rules) from receipt of the Demand Letter and failed to realize that it had long lost its remedy of appeal when it opted to file an MR with the CIR and awaited the latter's resolution thereon. To be clear, the Demand Letter, which was signed only by ACIR Roldan, is not the decision appealable to the CTA *but* the FDDA that Commissioner Henares signed.

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 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.[35]

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.[36] 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 Third Division never acquired jurisdiction over the case and thus properly dismissed the same *motu proprio*. The Court sees no relevant need to further tackle petitioner's other issues as these will not change the outcome of the present case.

WHEREFORE, the foregoing considered, the instant Petition for Review filed on 18 November 2019 by petitioner B. Nevalga Enterprises

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35 *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, 04 February 2015, citing *Lt. Col. De Guzman, et al. v. Municipal Circuit Judge Escalona*, G.R. No. L-51773, 16 May 1980.

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

Corp. By: Benito B. Nevalga is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated 17 September 2019 and 22 October 2019, respectively, of the Court's Third Division in CTA Case No. 10159, *B. Nevalga Enterprises Corp. By: Benito B. Nevalga v. Bureau of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(With due respect, I join PJ's D.O.)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(With due respect, I join PJ's D.O.)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

B. NEVALGA ENTERPRISES CORP. BY: BENITO B. NEVALGA,	**CTA EB No. 2171**
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-versus-	**RINGPIS-LIBAN,**
	MANAHAN,
	BACORRO-VILLENA, *and*
	MODESTO-SAN PEDRO, *JJ.*
BUREAU OF INTERNAL REVENUE,	
Respondent.	Promulgated: FEB 19 2021

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I am constrained to withhold my assent on the *ponencia*. I submit that the Petition for Review in CTA Case No. 10159 was timely filed with the Court in Division.

A perusal of aforesaid Petition for Review reveals that petitioner assails, among others, the Letter dated June 25, 2019 issued by Assistant Commissioner James H. Roldan, Enforcement and Advocacy Service. In the aforesaid Letter, petitioner was requested to pay its tax liabilities within ten (10) days from receipt thereof; and if circumstances warrant, the docket of the case shall be forwarded to the Assistant Commissioner, Collection Service, for the enforcement of collection through administrative summary remedies such as garnishment, distraint or levy.

I submit that since the aforesaid Letter constitutes the remedial action of respondent to collect from petitioner, the same falls within the context of "other matters" under the National Internal Revenue

Code (NIRC) or other law as part of law administered by the Bureau of Internal Revenue (BIR), that fall within the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA), as provided under Section 7(a) of Republic Act (RA) No. 1125, as amended.

Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.[1] was categorical that the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR are **separate and independent of each other**; and that the issue anent the **BIR's right to collect taxes may be considered as covered by the term other matters over which the CTA has appellate jurisdiction**, *viz.*:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. X x x. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide other matters related to the tax assessment such as **the issue on the right to collect** the same since the CIR maintains that when the law says that the CTA has jurisdiction over other matters, it presupposes that the tax assessment has not become final and unappealable.
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> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term other matters referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
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>> Section 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**.
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term other matters can be supported or even deduced. What is rather clearly apparent, however, is that the term other matters is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the **CTA is not**

[1] G.R. No. 169225, November 17, 2010.

> **limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**
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> x x x
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> Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over other matters arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.**
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> x x x
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> **To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the <u>validly assessed tax</u> has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**" *(Boldfacing and underscoring supplied)*

Notably, in *Hambrecht*, the taxpayer was able to elevate the Warrant of Distraint and/or Levy (WDL) before the CTA within the 30-day period to appeal. Thus, the CTA acquired jurisdiction to rule on the validity of the WDL, specifically on the issue of whether or not the CIR may pursue collection from the taxpayer.

In the present case, the fact that no appeal was taken to the CTA from the FDDA issued by then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares herself does NOT deprive the CTA of jurisdiction to review the validity of the collection of the deficiency taxes. As elucidated in *Hambrecht*, the CTA is vested with jurisdiction to determine the propriety of the <u>collection</u> being made by the BIR as only those deficiency taxes which have been validly assessed or covered by a valid assessment may be collected by the BIR.

Metro Star Superama, Inc. vs. Commissioner of Internal Revenue[2] is categorical in stating that **a void assessment bears no fruit**. Thus, the collection of the assessed amount, **albeit no protest was timely filed by the taxpayer**, was not permitted since the assessment issued against the taxpayer was void.

In the present case, should the CTA ultimately determine that the assessment is void or the deficiency tax sought to be collected was not validly assessed, collection thereof may not be justified. Like a void judgment, a void assessment produces no legal effect; it never attains finality and - akin to an outlaw - it may be slain whenever or wherever it exhibits its head.[3]

The disquisition in *Imperial vs. Cruz*[4] anent the effect of a void judgment is enlightening:

> "A void judgment is no judgment at all in legal contemplation. In *Canero v. University of the Philippines,* we held that-
>
> > x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. **It has no legal or binding effect or efficacy <u>for any purpose or at any place</u>.** It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. x x x
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> x x x
>
> Xxx, our ruling in *Banco Español-Filipino* v. *Palanca*[1] on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a **void judgment is 'a lawless thing, which can be treated as an outlaw and slain at sight, or ignored <u>wherever and whenever it exhibits its head</u>.'** In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect." *(Boldfacing and underscoring supplied)*

Analogously construed, a judgment of a Regional Trial Court (RTC) generally becomes final and executory if no appeal is taken

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[2] G.R. No. 185371, December 8, 2010.
[3] Imperial vs. Cruz, G.R. No. 178842, January 30, 2017.
[4] *Id.*

therefrom. Yet, this principle is premised on the assumption that the judgment is not fraught with fatal infirmity. If the judgment is void, the doctrine in *Imperial* applies, and its execution may not be made.

Similarly, when an assessment is found to be void - no collection of tax deficiencies based thereon may be allowed, irrespective of whether an appeal was made on the assessment.

All told, I vote to remand the case to the CTA Division for further proceedings.

ROMAN G. DEL ROSARIO
Presiding Justice