Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

LIGHT RAIL TRANSIT AUTHORITY, Petitioner,	**CTA EB No. 1325** (CTA Case No. 8891)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
BUREAU OF INTERNAL REVENUE, Represented by the COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 11 2017 2:41 p.m.

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RESOLUTION

CASANOVA, *J*.:

Before *Us* is petitioner's **Motion for Reconsideration** filed, through registered mail, on November 7, 2016 without respondent's comment as per Records Verification[1] dated February 14, 2017.

In its Motion, petitioner seeks reconsideration of the Court *En Banc* Decision[2] dated October 5, 2016, praying that a new one be rendered declaring the deficiency tax assessments for calendar year 2003 as invalid due to prescription. The dispositive portion of the assailed *En Banc* Decision reads as follows:

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[1] CTA *En Banc* Rollo, p. 185
[2] *Ibid.*, pp. 104-117

"**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated February 2, 2015 and May 19, 2015, respectively, in CTA Case No. 8891 are both **AFFIRMED.**

SO ORDERED."

Petitioner primarily claims that the Court *En Banc* erred in its decision by not passing upon the issue of prescription and by failing to take into account the actions performed by respondent which should have prevented the Final Decision on the Disputed Assessment ("FDDA") from attaining finality. Petitioner insists that respondent's right to assess its deficiency taxes for taxable year 2003 had already prescribed since the Preliminary Assessment Notice[3] (PAN) dated December 8, 2008 was issued more than four (4) years after the filing of its income tax return. As such, petitioner asserts that it violates Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides that internal revenue taxes must be assessed within three (3) years after the last day prescribed by law for the filing of the return. More so, petitioner also believes that the Court of Tax Appeals (CTA) has jurisdiction to take cognizance of its case in accordance with the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[4] (*"Philippine Journalist"* case), wherein the Supreme Court emphasized that the Court of Tax Appeals (CTA) also has jurisdiction on "other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue."[5] Thus, petitioner insists that the CTA should pass upon the applicability of the statute of limitations since it clearly falls under the *other matters* clause of this Court's jurisdiction.

After careful deliberation, *We* find no merit in petitioner's allegations. The arguments proffered in the instant Motion are mere rehash of the arguments already raised and resolved, not only in the Court *En Banc*, but in the court *a quo* as well. Nonetheless, *We* shall expound the discussion of the issues reiterated herein for clarity and petitioner's better understanding.

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[3] Annex "D" of the Petition for Review, CTA *En Banc* Rollo, pp. 41-42
[4] G.R. No. 162852, December 16, 2004
[5] Section 7 (1) of Republic Act No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals" dated June 16, 1954

While it is true that Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or the actual date of filing of said return, whichever comes later; such rule, however, is not absolute. In certain instances, assessments may be issued beyond the three-year prescriptive period and the same shall still be considered as valid, thus:

> "**SEC. 203. Period of Limitation Upon Assessment and Collection**. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

As mentioned above, one of the exceptions enumerated under Section 222, is upon a written agreement between the tax authorities and taxpayer concerned through the execution of a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, *viz*:

> "**SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** —
>
> *x x x*
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, **the tax may be assessed within the period agreed upon**. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
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> *x x x." (Emphasis Ours)*

In the present case, perusal of the PAN would reveal that respondent's deficiency tax assessments were issued within the period agreed upon by petitioner and respondent. The relevant portion of the PAN is quoted hereafter for ease of reference, *viz*:

> "VI. PERIOD OF PRESCRIPTION
>
> Since you/your authorized representative had executed a waiver of the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National internal Revenue Code, on September 13, 2006 and have consented to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than December 31, 2008, the period of prescription, therefore, is suspended from the date of execution up to December 31, 2008."[6]

From the foregoing, both petitioner and respondent agreed that the period of prescription shall be suspended **from September 13, 2006**, the date of execution of the waiver of the defense of prescription under the statute of limitations, **up to December 31, 2008**. As such, considering that the PAN was issued on December 8, 2008 and, the Formal Assessment Notice with Details of Discrepancies[7] was issued on December 24, 2008, respondent's deficiency assessments were clearly issued within the period agreed upon by the parties.

Anent petitioner's assertion that its case clearly falls under the *other matters* clause effectively placing the matter under the jurisdiction of this Court, *We* cannot accede to the same.

In CTA *En Banc* case *Adelardo K. Pagente vs. Hon. Esmeralda M. Tabule, Hon. Nelson Aspe and Hon. Kim Jacinto Henares*, CTA EB Case No. 1030 (CTA Case No. 8280) *("Pagante case")*, June 3, 2014, *We* had the opportunity to further elaborate on what comprises "other matters." Hence, *We* quote:

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[6] At page 3, Details of Discrepancies, Annex "A" of the Preliminary Assessment Notice, Annex "D" of Petition for Review, CTA En Banc, p. 45

[7] Annex "F" of the Petition for Review, CTA *En Banc* Rollo, pp. 50-54

"It strikes this Court that while the petitioner invokes the 'other matters' clause, he does so in reference to decisions or rulings rendered by the BIR, which thus do not actually qualify as 'other matters'. The issues he raised before the BIR and this Court all go back to the finality of the assessment that he failed to dispute. Had he disputed the assessment in the manner prescribed by Section 228 of the NIRC, the decision or inaction thereon of the CIR would have been appealable to and thus within the jurisdiction of this Court.

When petitioner filed his Petition for Review before the Second Division, the reliefs he sought were the following: the reversal of the March 10, 2011 ruling of Dir. Tabule of Revenue Region-16; the cancellation of the tax assessment; and the lifting of the alleged tax deficiency. In his Motion for Reconsideration dated February 25, 2013, the petitioner prayed for the reversal and setting aside of the same ruling of Dir. Tabule; the declaration of the PAN as invalid and void *ab initio* for being issued without authority; and the declaration of the FLD and FAN as baseless because of an invalid PAN.

x x x It is thus fairly obvious that the issues presented by the petitioner all arose from the deficiency tax assessment that he failed to properly protest on time, and thus do not fall within this Court's jurisdiction, even under the 'other matters' clause. For an assailed assessment to come within this Court's jurisdiction, it must first have been disputed in accordance with Section 228 of the NIRC, and there must have been a decision or inaction on the dispute by the CIR; otherwise, the assessment becomes final and executory, placing it beyond this Court's appellate jurisdiction.

x x x

On the other hand, an assessment that has become final and executory for failure to protest it within the statutory period, cannot possibly come within the CTA's appellate jurisdiction under the 'other matters' clause. Under the Sec. 270 NIRC of 1977, an assessment that was not administratively protested on time 'shall become final and unappealable.' The equivalent Section 228 in the NIRC of 1997 simplified the wording to 'shall become final.' Nonetheless, jurisprudence has been consistent that **an undisputed assessment becomes unappealable after the lapse of the period to protest it.**

In ***Oceanic Wireless Network Inc. vs. CIR***, a request for reconsideration [of an assessment] must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested.

In ***CIR vs. Hambrecht & Quist Philippines, Inc.***, 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.

In ***Commissioner of Internal Revenue vs. Bank of the Philippine Islands***, the Supreme Court held that '[t]he inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments.'

To circumvent the unappealable character of an assessment that had attained finality, the petitioner resorted to the ruse of assailing not the assessment itself but the adjuncts of its validity: service of notice, the authority of the officer who issued the PAN, and the alleged use of the thereby invalid PAN as basis for the FAN and FLD. But as the jurisprudence cited above enunciate, the validity of an assessment may no longer be questioned on appeal.

The petitioner's assault may be likened to the tardily-filed 'disguised protest' that the Supreme Court struck down in a case where the petitioner heirs never questioned the assessments served upon them, allowing the same to lapse into finality, and prompting the BIR to collect the taxes by levying upon the properties left by the decedent. In the said case, the Supreme Court aptly held:

> 'The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest. In the main, certiorari may not be used as a substitute for a lost appeal or remedy.'" *(Citations Omitted)*

Going back to the present case, petitioner's prayer in its Petition for Review[8] dated September 11, 2014, filed with the CTA Division, initially reads, "*x x x* the respondent be ordered to conduct re-investigation on the alleged tax liabilities of the Petitioner." [9] While, in the reliefs portion of its Petition for Review[10] dated July 9, 2015, filed with the Court *En Banc*, it prays the following:

a. The Petition be given due course;

b. After notice and hearing, the assailed Decision of the 3rd Division of this honorable Court, in the above-entitled case, dated 02 February 2015, dismissing the petition for review, and its Resolution, dated May 19, 2015, denying petitioner's Omnibus Motion be REVERSED and SET ASIDE and a new one be issued declaring respondent as barred by prescription from assessing the petitioner for deficiency taxes for the Calendar Year 2003, subject matter of this case;

c. The following be declared NULL and VOID:

   i. Preliminary Assessment Notice, dated 08 December 2008;
   ii. Formal Assessment Notice, dated 24 December 2008;
   iii. Final Decision on Disputed Assessment, dated 01 April 2011;
   iv. Preliminary Collection Letter, dated 20 September 2011;
   v. Final Notice Before Seizure, dated 23 November 2011;
   vi. Warrant of Distraint and/or Levy, dated 05 March 2012;
   vii. Letter of Regional Director Jonas DP Amora of Revenue Region No. 8-Makati City, dated 30 June 2014; and
   viii. all other actions of respondent and/or those of *[his]* subordinates, agents, delegates, etc., attempting to

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[8] Division Docket, pp. 6-14
[9] *Ibid.*, pp. 11-12
[10] CTA *En Banc* Rollo, pp. 7-22

collect the alleged deficiency taxes from petitioner for Calendar Year 2003.

Evidently, petitioner's prayers are indicative that the issues raised by petitioner all arose from the deficiency tax assessments that it failed to properly appeal on time; which, as held in the *Pagante case*, do not fall within this Court's jurisdiction, even under the "other matters" clause.

Consequently, having lost the remedy of appeal to the CTA, respondent's deficiency assessments have attained finality and became executory. As explained by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, et al.,*[11] petitioner is now precluded from interposing the defense of legality or validity of the assessment.

> "*x x x* [A] taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes." *(Citations Omitted)*

Again, *We* stress that, while the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdictional. "If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss".[12]

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[11] G.R. No. 177279, October 13, 2010

[12] Ker and Company, Ltd. vs. The Court of Tax Appeals and the Collector of Internal Revenue, G.R. No. L-12396, January 31, 1962, *citing* Callahan vs. Chespeake & Ohio, 407 Supp. 323, mentioned on p. 175, Moran's Rules of Court, Vol. 1, 1952 Ed.

Hence, in view of the foregoing, *We* find no cogent justification to disturb the conclusions in the CTA *En Banc* Decision dated October 5, 2016.

WHEREFORE, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice