REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**THIRD DIVISION**

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| PHILIPPINE ELECTRIC CORPORATION, Petitioner, | CTA CASE NO. 8793 |
| | Members: |
| -versus- | BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: OCT 10 2017 3:30 p.m. |

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**DECISION**

***FABON-VICTORINO, J.:***

In this Petition for Review filed on April 4, 2014, petitioner Philippine Electric Corporation seeks to reverse and set aside the Final Decision on Disputed Assessment (FDDA), issued by respondent Commissioner of Internal Revenue (CIR), for alleged deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT) for taxable year (TY) 2008 in the total amount of ₱135,386,488.95.

**THE FACTS**

Petitioner Philippine Electric Corporation is a domestic corporation with office address at Kaytikling, Barrio Dolores, Taytay, Province of Rizal. It is registered with the Securities and Exchange Commission (SEC)[1] and with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 000-100-191-000.[2]

[1] Exhibit "P-1".
[2] Exhibit "P-1-A".

On the other hand, respondent is the Commissioner of Internal Revenue, authorized to decide 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 (NIRC) of 1997, as amended, or other laws, rules and regulations administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

In September 2009, the Large Taxpayers Audit and Investigation Division 2 of the BIR conducted a tax examination of petitioner for TY 2008, pursuant to Letter of Authority (LOA) No. LOA-2008-000-33826[3] dated August 4, 2009.

On April 12, 2012, petitioner received a copy of the Formal Letter of Demand[4] (FLD) dated March 26, 2012 issued by respondent, to which petitioner filed its reply[5] on April 20, 2012.

On April 12, 2013, petitioner, through its Comptroller, Alejandra Marquez, received a copy of the FDDA dated February 5, 2013[6].

On May 10, 2013, petitioner filed an administrative appeal for reconsideration and reinvestigation addressed to OIC-Assistant Commissioner Alfredo V. Misajon [7].

On November 15, 2013, petitioner received a Notice of Denial[8] signed by Assistant Commissioner Misajon.

On December 13, 2013, petitioner filed before respondent a Request for Reconsideration on the Notice of Denial.[9]

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[3] Exhibit "P-16". However, Exhibit "P-16" shows that the LOA was issued by the Large Taxpayers Audit and Investigation Division I.
[4] Exhibit "P-17".
[5] Exhibit "P-18".
[6] Exhibit "P-15".
[7] Exhibit "P-19".
[8] Exhibit "P-22"; Exhibit "R-9".
[9] Exhibit "P-23".

On March 7, 2014, petitioner received a Warrant of Distraint and/or Levy (WDL)[10] from the Large Taxpayer Collection and Enforcement Division of the BIR, for the collection of taxes assessed per FDDA in the amount of ₱135,386,488.95 broken down as follows:

| TAX TYPE | BASIC | INTEREST | TOTAL |
|---|---|---|---|
| IT | ₱67,535,184.10 | ₱51,289,734.34 | ₱118,824,918.44 |
| VAT | 4,820,849.54 | 3,888,378.37 | 8,709,227.91 |
| EWT | 4,341,267.87 | 3,511,074.73 | 7,852,342.60 |
| **TOTAL** | ₱76,697,301.51 | ₱58,689,187.44 | ₱135,386,488.95 |

Petitioner treated the WDL as a denial of its request for reconsideration. Hence, on April 4, 2014, petitioner filed the instant Petition for Review with Motion to Suspend Collection of Income Tax, Expanded Withholding Tax and Value Added Tax and Surcharges and Interests.

During the hearing on the incident, petitioner presented Attorney Leonard L. Escueta[11] and its Comptroller Alejandra D. Marquez[12] on the witness stand to substantiate its motion to suspend collection of taxes[13].

On May 13, 2014, respondent filed through registered mail its Comment and/or Opposition (to Motion to Suspend Collection of Income Tax, Expanded Withholding Tax and Value-Added Tax and Surcharges and Interest) with Motion to Dismiss[14].

On May 26, 2014, petitioner filed its Reply with Opposition/Comment to respondent's Comment and/or Opposition, with Motion to Dismiss[15].

In a Resolution[16] dated June 20, 2014, the Court granted petitioner's motion to suspend the implementation of the WDL, subject to the posting of a surety bond.

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[10] Exhibit "P-2".
[11] Exhibit "P-13".
[12] Exhibit "P-14".
[13] Minutes of the Hearing dated May 8, 2014, docket, vol. 1, p. 513.
[14] Docket, vol. 1, pp. 629-639.
[15] Docket, vol. 2, pp. 657-681.
[16] Docket, vol. 2, pp. 705-715.

On July 4, 2014, petitioner filed its Compliance (Re: Resolution dated June 20, 2014)[17] pertaining to the posting of the required bond.

On July 24, 2014, respondent filed his Answer *Ex-Abudanti Ad Cautelam*[18] basically arguing that the jurisdiction over the subject matter of the action is determined by the allegations in the complaint and the character of the relief sought. Since petitioner is questioning the merits of the assessments he issued, its cause of action is patently based on Section 228 of the NIRC of 1997, as amended. Therefore, the statutory periods in the provision must be complied with by petitioner.

Considering that the assessments became final, executory and demandable for failure to comply with the prescribed period, the Court is deprived of jurisdiction to entertain the present Petition, and the only power it has is to dismiss the action, counters respondent.

Even assuming that the Court has jurisdiction over the Petition, the assailed assessments have legal and factual bases, hence, valid and lawful. Respondent invokes the legal presumption that assessments are presumed correct[19]; and the burden of proof is on the taxpayer contesting the validity or correctness of the assessment to prove not only that the respondent is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands.[20]

During trial on the merits, petitioner presented Attorney Leonard L. Escueta, Alejandra D. Marquez and Glenn Ian D. Villanueva.

**Attorney LEONARD L. ESCUETA** testified[21] that he was petitioner's Senior Finance Manager from May 6, 2013 to August 25, 2014. He handled petitioner's tax assessment

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[17] Docket, vol. 2, pp. 716-719.
[18] Docket, vol. 2, pp. 817-832.
[19] Sy Po v. Court of Tax Appeals, 164 SCRA 524.
[20] Commissioner of Internal Revenue v. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005.
[21] Exhibits "P-29" to "P-29-a".

cases and as petitioner's point person, he coordinated with the BIR on matters pending before it concerning petitioner.

Petitioner is a domestic corporation registered with the SEC and the BIR. It is mainly engaged in the manufacture and distribution of power transformers, with office address at Kaytikling, Bo. Dolores, Taytay, Rizal.

BIR examination was conducted against petitioner pursuant to LOA No. LOA-2008-000-33826 dated August 4, 2009. On April 12, 2012, petitioner received a copy of the FLD dated March 26, 2012, to which it filed a Response dated April 20, 2012.

Attorney Escueta further declared that petitioner continued to coordinate with the Office of Assistant Commissioner Misajon of the Large Taxpayers Service (LTS) for purposes of submitting documents to substantiate its stance against the alleged deficiency assessments. This notwithstanding, the BIR issued the FDDA which petitioner received on April 12, 2013. This prompted petitioner to file a request for reinvestigation/reconsideration dated May 10, 2013, with him as signatory.

Subsequently, petitioner discovered that its May 10, 2013 letter was not formally forwarded to the Office of Assistant Commissioner Misajon as the case docket had already been forwarded to the Large Taxpayers Division-Collection and Enforcement Division (LT-CED) for collection. Thus, in a letter dated May 27, 2013[22], petitioner requested for the return of the docket to the LTS on the ground that it was prematurely forwarded for collection. This request was reiterated in a letter dated June 19, 2013[23]. In both instances, petitioner allegedly submitted supporting documents and reiterated that the subject deficiency assessments should be cancelled.

On November 15, 2013, petitioner received a Notice of Denial of its request for reinvestigation/reconsideration signed by Assistant Commissioner Misajon.

[22] Exhibit "P-20".
[23] Exhibit "P-21".

On December 13, 2013, petitioner filed an administrative appeal with respondent claiming that the denial lacks legal and factual basis.

On March 7, 2014, petitioner received a WDL for LT-CED based on the FDDA.

Hence, on April 4, 2014, petitioner filed the instant Petition for Review alleging that the deficiency tax assessments are arbitrary, patently illegal and void as they were issued in violation of its right to due process. Petitioner also suspects that the BIR completely disregarded the documents it submitted to substantiate its protest. In effect, petitioner was deprived of the opportunity to be heard and refute the assessments.

Further, the right of the BIR to assess deficiency EWT and VAT assessments for 2008 had already prescribed, rendering the assessments void. The First Waiver[24] signed by Alejandra Marquez is invalid since she did not appear before a notary public, a requirement for a valid waiver. It follows, that the Second Waiver[25] is also invalid. The Second Waiver does not also have the date of acceptance by the BIR, a violation of BIR Regulations. Thus, without a valid Waiver of the Statute of Limitations, the EWT and VAT assessments were belatedly issued against petitioner on March 26, 2012, or more than the 3-year period for assessment.

Moreover, the deficiency IT assessment issued against petitioner is erroneous as it was based on alleged petitioner's undeclared purchases on importations per Bureau of Custom's (BOC) records. However, comparison between the BOC record and those of petitioner shows that petitioner had no undeclared sales for 2008.

According to the witness, the BIR examiner proceeded with the line by line comparison between Summary List of Sales (SLS) reports and the Tax Reconciliation System-Withholding Tax Income Verification Capability (TRS)

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[24] Exhibit "P-25"
[25] Exhibit "P-26".

reports, which resulted to discrepancies amounting to P171,101,155.56, and deemed by the BIR as petitioner's undeclared sales. Examination however shows that the amount is not equal to the amount reflected in the FDDA it issued and which discrepancy the BIR failed to explain.

Moreover, the EWT assessment issued by the BIR is erroneous since there is nothing in the PAN, FAN and FDDA that shows how the said EWT deficiency assessment was arrived at. Mere claim of variances in computation absent facts on which said variances were based cannot be relied upon.

The witness continued to state that in arriving at the EWT deficiency assessment of ₱4,341,267.87, the BIR only consider the expenses reported in petitioner's Audited Financial Statements (AFS) and applied the EWT rates on specific expenses without elaborating on the basis thereof. The amounts deduced were then compared with the Alphalist submitted to the BIR. But for the witness, the said procedure was erroneous since the expenses were lumped together without distinction or elaboration on the detail or basis of each expense.

The VAT deficiency assessment is as well erroneous given that the BIR disregarded the supporting documents that petitioner presented to prove its sales to several zero-rated entities, as well as its payments of VAT on rental income.

Attorney Escueta however admitted that petitioner filed a motion for reconsideration attaching the very same documents previously submitted with the BIR in support of its protest. In any event, he was able to review only the record pertinent to petitioner's protests to the PAN and FAN since he was employed only on May 6, 2013. He further clarified that he was not yet connected with petitioner when witness petitioner's comptroller Alejandra Marquez executed the two Waivers. He also declared that the BIR has the right to consider what among the documents submitted by petitioner are pertinent to the tax case.

In addition, he testified that he was not present when the BIR examined petitioner's documents, hence, he cannot say with certainty if the documents submitted by petitioner were not considered by the BIR examiners.

Petitioner's Comptroller, **ALEJANDRA D. MARQUEZ** corroborated[26] the foregoing declarations. In addition, she admitted that she did not appear before the notary public after she signed the first Waiver, a fatal defect in the Waiver, as such requisite is mandatory. Therefore, the deficiency EWT and VAT assessments were belatedly issued by respondent on March 26, 2012. The Second Waiver that she executed is also flawed for it did not bear the date of acceptance by the BIR in violation of the rules on the matter. Hence, the FLD was issued beyond the 3-year period to assess, reckoned from the date of actual filing or last day of filing of a return.

Specifically, she stated that the EWT assessment for 2008 should have been made at the latest on January 6, 2012, since the last of the EWT Returns[27] was filed on January 14, 2009. However, the FLD was issued only on March 26, 2012, or beyond the 3-year period. She also declared that petitioner filed its last VAT return on January 24, 2009. Counting the 3-year period for assessment, the last day for respondent to assess VAT would be January 26, 2012.

The witness opined that petitioner has no deficiency income tax from undeclared sales since it was able to substantiate its 2008 sales when it submitted its CWTs, Official Receipts, Sales Invoices and other relevant documents to the BIR.

With regard the two Waivers, she admitted that she executed them freely and have read their contents carefully and was fully aware of their purpose. Finally, there was no board resolution issued when she signed the waivers.

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[26] Exhibits "P-30" and "P-30-a".
[27] Exhibits "P-27" to "P-27-L".

Court-commissioned Independent Certified Public Accountant (ICPA) **GLENN IAN D. VILLANUEVA** testified[28] that he examined and verified the documents allegedly supporting petitioner's rejection of the deficiency IT, VAT and EWT for TY 2008 issued against it.

In his Revised Report dated April 6, 2015[29], he indicated that he was able to ascertain that ₱169,996,169.70 of the alleged undeclared sales actually refers to transactions that occurred in TYs other than 2008, but it was only in 2008 that the CWT certificates were claimed as tax credits. Thus, petitioner should not be made liable for deficiency income tax for these transactions because they do not refer to income in 2008.

As for VAT, out of the total zero-rated sales of ₱69,097,771.77 per VAT Return, ₱65,794,066.45 is properly supported with proof of VAT zero-rating for the year 2008.

Finally, for EWT, petitioner is liable for ₱2,220,258.39 out of the ₱4,341,267.87 deficiency EWT assessed in the FDDA.

With the admission of its evidence, petitioner rested its case.[30]

Respondent, on the other hand, presented Revenue Officer (RO) **FELINA B. GUIMBAO**, as his lone witness. She testified[31] that she is currently assigned as RO IV at the Regular Large Taxpayers Audit Division I.

She examined petitioner's internal revenue tax liabilities for 2008. Petitioner submitted some of the documents listed in the checklist of requirements[32] provided to it. Thus, the BIR issued a Second Notice for Presentation of Records on September 29, 2009[33]. For failure of petitioner to comply with the Second Notice, a Final Notice

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[28] Exhibits "P-50" and "P-50-a".
[29] Exhibit "P-31".
[30] Resolution dated December 14, 2015, docket, vol. 4, pp. 2034-2035.
[31] Exhibits "R-10" to "R-10-a".
[32] Exhibit "R-1".
[33] Exhibit "R-2".

for Presentation of Documents[34] was sent to it. Thereafter, an actual audit based on the documents submitted by petitioner was conducted. Then, petitioner was granted the opportunity to refute respondent's finding through a Notice for Informal Conference dated October 18, 2011[35].

In a Letter dated November 8, 2011, petitioner partially agreed on certain issues on IT, VAT, EWT and final tax (FT) in the total amount of ₱1,040,042.72. It however, raised other issues for which it obliged to submit supporting documents. Since petitioner submitted only schedules which are self-serving, she issued a Memorandum to Assistant Commissioner Misajon for the approval of the issuance of PAN. Subsequently, her request for issuance of a PAN[36] was approved by Assistant Commissioner[37].

Petitioner filed a reply-letter to the PAN dated March 22, 2012. Nevertheless, FLD dated March 26, 2012[38], with attached Details of Discrepancies and Audit Result/Assessment Notices for IT, VAT, EWT, FBT and FT[39], were issued since petitioner failed to submit documents to substantiate its stand.

RO Guimbao admitted that she was not certain if the Second and the Final Notice for Presentation of Records were actually received by petitioner for she did not receive the return cards.

With the admission of respondent's evidence, respondent rested his case[40].

After petitioner's filing of its Memorandum[41] on September 22, 2016 and considering the Manifestation[42] filed by respondents on August 26, 2016, stating that he is adopting the arguments raised in his Answer as his

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[34] Exhibit "R-3".
[35] Exhibit "R-4".
[36] Exhibit "R-5".
[37] Exhibit "R-6".
[38] Exhibit "R-7"
[39] Exhibits "R-8" to "R-8-d".
[40] Resolution dated July 21, 2016, docket, vol. 4, pp. 2086-2087.
[41] Docket, vol. 4, pp. 2110-2163.
[42] Docket, vol. 4, pp. 2094-2095.

memorandum, the case was deemed submitted for decision[43].

## THE ISSUES

The parties submitted the following issues[44] for the Court's determination:

1. Whether the Petition for Review dated April 4, 2014 was appealed in accordance with the provisions of Section 228 of the NIRC in relation to Section 9 of Republic Act (RA) No. 9282 or it was appealed as "other matters" under Section 7(a) of RA No. 9282.

2. Whether the Petition for Review dated April 4, 2014 was timely filed in accordance with Section 228 of the NIRC of 1997, as amended.

3. Assuming the Court has jurisdiction and further assuming that it can decide on the validity of the assessments, whether petitioner is liable for deficiency income tax, EWT and VAT in the aggregate amount of ₱135,386,488.95 for taxable year 2008.

4. Whether the period to assess petitioner has already prescribed.

5. Whether the assessments against petitioner are null and void for having been arbitrarily made.

6. Whether this Court can decide on the validity of the assessments issued against petitioner.

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[43] Resolution dated October 5, 2016, docket, vol. 4, p. 2172.
[44] Issues to be Resolved, JSFI, docket, vol. 2, p. 1238.

## THE COURT'S RULING

The Court must first determine the timeliness of filing of the instant Petition for Review. In this regard, Section 228 of the NIRC of 1997, as amended[45], provides that a taxpayer has thirty (30) days from receipt of the FAN within which to file its administrative protest requesting for a reconsideration or reinvestigation, and has sixty (60) from filing of the protest to submit supporting documents. If the protest is denied or not acted upon after the lapse of one hundred eighty (180)-day period from the taxpayer's submission of relevant supporting documents, the taxpayer has 30 days from receipt of respondent's denial, or from the lapse of the 180-day period for respondent to decide, within which to file its Petition for Review with this Court.

To implement the foregoing provision Section 3.1.5 of Revenue Regulations (RR) No. 12-99[46] provides that a taxpayer or his duly authorized representative may challenge, through a written protest, the FLD and assessment notice within thirty (30) days from notice. In

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[45] 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 pre-assessment notice shall not be required in the following cases:

xxxx.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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, 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, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[46] 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.

case of adverse ruling by respondent or his duly authorized representative, **the taxpayer may seek judicial intervention with this Court within thirty (30) days from receipt of the adverse decision, lest the assessment shall become final, executory and demandable**. If the taxpayer opts to seek reconsideration of the adverse decision with respondent, the 30-day period must also be observed. Under this scenario, the final decision of respondent's duly authorized representative shall not be considered final, executory and demandable and respondent shall decide the appeal.

In the case of Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, *et. al.*[47] (PAGCOR case), the Supreme Court enumerated the options available to a taxpayer under Section 228 of the NIRC of 1997, as amended, and as implemented by Section 3.1.5 of RR No. 12-99, to wit:

> 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 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> 1. If the protest is wholly or 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.
>
> 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.
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> 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

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[47] G.R. No. 208731, January 27, 2016.

> 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.

Thus, if the administrative protest of the taxpayer is denied by respondent's duly authorized representative, the aggrieved taxpayer may either appeal the decision to respondent or to this Court. If the taxpayer appeals to respondent, the decision of the duly authorized representative shall not attain finality and respondent shall decide the appeal himself.

In this case, petitioner received the FDDA dated February 5, 2013 issued by OIC-Assistant Commissioner, Large Taxpayer Service Misajon on April 12, 2013. Applying Section 228 of the NIRC, as amended, in relation to Section 3.1.5 of RR No. 12-99, petitioner had until May 13, 2013 within which to appeal the FDDA either to respondent or to this Court.

On May 10, 2013, however, petitioner, rather than seeking judicial intervention, filed an administrative appeal for reconsideration and reinvestigation allegedly pursuant to RR No. 12-99 with OIC-Assistant Commissioner Misajon, the officer who issued the FDDA. Note however that the thirty (30)-day period to appeal to this Court the final decision of respondent or his duly authorized representative under Section 228 of the NIRC of 1997, as amended, must still be observed and not, in anyway, extended or renewed.

Clearly, petitioner's appeal of the FDDA to the OIC-Assistant Commissioner is not within the realm of, or sanctioned under Section 228 of the NIRC of 1997, as amended, as implemented by RR No. 12-99.

In denying petitioner's request for reconsideration and reinvestigation as indicated in the Notice of Denial, OIC-Assistant Commissioner Misajon, enjoin authoritatively petitioner that the "proper remedy on this case pursuant to Revenue Regulations No. 12-99 is to appeal the subject FDDA to the Office of the Commissioner of Internal

Revenue", which course of action petitioner clearly did not take, hence, its "period xxx to appeal to the Commissioner of Internal Revenue has lapsed".

The Court agrees with respondent that petitioner cannot find solace on its alleged reliance on RMC No. 39-2013.

The story behind the issuance of RMC No. 39-2013 suggests that it was meant to clarify the officer to whom the protest letters to the FAN and FLD should be addressed, thus:

> It has been observed that substantial number of tax cases covered by Final Assessment Notices (FANS) and Formal Letters of Demand which had been reported by the Regional Assessment Divisions under the prescribed Monthly Summary of Taxes Assessed-Unprotested (BIR Form 40.00) were still allowed to be referred to the concerned investigating office for reinvestigation, notwithstanding that the assessments were already final and executory. Further, since they have become delinquent accounts, they are already subject to enforcement collection through summary remedies under Sections 205, 206 and 207 of the National Internal Revenue Code (NIRC) of 1997, as amended. However, taxpayers alleged that their protest letters had been filed with other offices of the Bureau before the prescribed deadline under existing regulations and that the same failed to reach the concerned Regional Assessment Divisions before the submission of the BIR Form 40.00 report to other concerned offices.

In view the of the foregoing concerns of Regional Assessment Divisions, RMC No. 39-2013 was issued with the following clarifications:

> 1. **All letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall only be filed** by the taxpayers or their duly authorized representatives, in person or through registered mail with return card, **with the Office of the concerned Regional Director (RD), Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), who signed the Preliminary Assessment Notices (PANs), FANs and**

> **Formal Letters of Demand**, for proper recording of the protests, and evaluation **if the same is in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99.** If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be considered void and without force and effect. (*Emphasis supplied*)

Thus, the protest letter to the PAN, FAN, and FLD should be filed with the enumerated named BIR officers and the protest must be "in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99". There is also nothing in the RMC that states that an appeal of the FDDA should be made to the CIR's duly authorized representative. Hence, in cases of appeal of the FDDA, petitioner should have followed the procedure laid down in Section 228 of the NIRC of 1997, as amended, as implemented by RR No. 12-99.

Significantly, the FDDA dated February 5, 2013 even reminded petitioner that the same shall be the final decision of the taxing authority on the subject assailed assessments, to wit:

> xxx This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency internal revenue tax assessment shall become final, executor [sic] and demandable.

Completely oblivious of the content of the FDDA, petitioner filed its appeal to respondent CIR on December 13, 2013, and the Petition for Review before this Court on April 4, 2014, or beyond the 30-day prescriptive period to appeal either to respondent or to this Court which ended on May 13, 2013. On account thereof, the assessment became final, executory and demandable pursuant to Section 228 of the NIRC of 1997, as amended, as implemented by RR No. 12-99.

The 30-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith bars the appeal and deprives the CTA of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[48]

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[49] and 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 or nature 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.[50] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[51]

Since the Court has no jurisdiction over the instant case, discussion on the other issues raised is unwarranted.

**WHEREFORE**, the instant Petition for Review filed by petitioner Philippine Electric Corporation on April 4, 2014, is hereby **DISMISSED,** for lack of jurisdiction.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[48] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.
[49] Commissioner of Internal Revenue v. Villa, et al., G.R. No. L-23988, January 2, 1968
[50] Laresma v. Abellana, G.R. No. 140973, 11 November 2004, 442 SCRA 156, 169.
[51] Please refer to De Guzman, et al. v. Escalona, et al., G.R. No. L-51773, 16 May 1980, 97 SCRA 619, 627

*We Concur:*

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

## ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice