REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CITIAIRE INDUSTRIAL SERVICES CORPORATION, Petitioner,	**CTA CASE NO. 9713**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 14 2020 11:00 a.m.

x - x

AMENDED DECISION

BACORRO-VILLENA, J.:

In the Petition for Review filed by petitioner Citiaire Industrial Services Corporation (**CISC/petitioner**), pursuant to Sections 11[1] and 7[2] of Republic Act No. 1125 (**RA 1125**), it claims that respondent

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[1] **Sec. 11.** ***Who may appeal; effect of appeal.*** – Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

No appeal taken by the Court of Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

[2] **Sec. 7.** ***Jurisdiction.*** – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in

Commissioner of Internal Revenue (**CIR/respondent**) issued Warrants of Garnishment (**WGs**)[3] without any prior tax assessment against it.

The factual antecedents would have it that, on September 2017, petitioner received respondent's WG dated 29 June 2017[4] and the same was sent to the Union Bank of the Philippines. Surprised of respondent's action, petitioner wrote a letter to respondent requesting a reinvestigation.[5] The letter was coursed through the BIR Regional Director, Revenue Region No. 7 of Quezon City. On 09 October 2017, petitioner learned of respondent's denial of its request. It then filed the instant petition.

Petitioner found the issuance of the WG improper since it did not receive deficiency tax assessments for taxable year (**TY**) 2012. According to it, the assessment was allegedly contained in a Formal Letter of Demand (**FLD**) with Details of Discrepancies[6], and (Final) Assessment Notices (**FAN**).[7]

Petitioner also found out that the FLD and/or FAN were sent to its former address at 5th Floor Ben-Lor Building, No. 1184 Quezon Avenue, Quezon City and not to its new address at No. 25, Road 4, Project 6, Quezon City. According to it, it moved its business address because its lease contract expired. However, its business contact numbers remained the same. It thus contended that, with the absence of proper service of the FLD and/or FAN, it was not informed of the laws and facts upon which the tax deficiency assessment was based, violating its right to due process under the NIRC of 1997, as amended.

> relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
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> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and[,]
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> (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

3 Exhibits "P-4-A" to "P-4-C", "P-4-D" to "P-4-F" and "P-4-G".
4 Exhibit "P-4-A".
5 Exhibit "P-5".
6 Exhibit "P-10".
7 Exhibits "P-7-A" to "P-7-F", admitted as secondary evidence.

The following issues were brought forth before the Second Division (where the case was raffled): (1) whether the WGs and assessment notices issued by respondent should be revoked and declared null and void; (2) whether the assailed formal letter of demand and/or final assessment notice (**FLD/FAN**) issued by respondent are void for being insufficient in form; (3) whether respondent's right to assess and collect alleged tax deficiencies against petitioner is barred by prescription and/or statute of limitations; (4) whether the assessment of deficiency income tax, value-added tax (**VAT**), withholding compensation, improperly accumulated earning tax, documentary stamp tax and compromise penalty in the amount of ₱63.569 million are with factual and legal bases; and, (5) whether petitioner is liable for the aforementioned taxes.

In the now assailed Decision of 23 January 2020, the Court found that petitioner failed to notify respondent of its change of business address hence the service of the FLD/FAN to its registered address with the Bureau of Internal Revenue (**BIR**) was valid. And since both parties have stipulated that the same were indeed mailed to the registered address then respondent has no duty to prove that he actually sent them to the said address.

In addition, the Court assumed jurisdiction over the case and proceeded to void the assessment since there was no due date to pay the assessed amount; that is, after a cursory reading of the FLD and the assessment notices.

To the above declaration and ruling, respondent file his Motion for Reconsideration (**MR**) upon the sole reason that the Court erred in declaring the WG and the related assessment covering the taxable year 2012 void. Petitioner, although directed to file its Comment, failed to do so.

In support of the MR, respondent argues that the enclosed assessment notices that the Court relied on for its 23 January 2020 Decision were photocopies and may not have reflected the true and actual content of the originally issued assessment notices.

The Court resolves.

Upon a second hard look at the pieces of evidence, the Court is constrained to reconsider. The FLD[8] appears to carry the following:

> ...
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> Pursuant to the provisions of Section 228 of the NIRC of 1997, as amended, and its implementing Revenue Regulations (RR), **you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency tax liabilities** in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605.)[9]
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> ...

Consistent thus with our pronouncement in the assailed Decision that respondent's service of the FLD and/or Final Assessment Notice (**FAN**) on 24 June 2016 (as provided in the Registry Receipt[10] with Number RD 627953280) on petitioner's old address was valid and binding for purposes of the period within which to reply[11], petitioner's filing of protest with request for reinvestigation[12] on 27 September 2017 (or over a year from its receipt of the FLD) was already beyond the 30-day prescriptive period provided under Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as implemented by Section 3.1.5 of Revenue Regulation (**RR**) 12-99. These provisions read:

> ...
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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: Provided, however, that a pre-assessment notice shall not be required in the following cases:
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> ...
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> 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.
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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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8 BIR Records, p. 350.
9 Emphasis supplied.
10 BIR Records, p. 373.
11 Division Docket, p. 416.
12 Exhibit "P-4", Division Docket, pp. 290-292.

> 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. (Underscoring supplied)
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> ...
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> **SEC. 3.1.5.** *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
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> ...
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.[13]
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> ...

From the afore-quoted law and relevant regulations, the failure to file a timely protest makes the assessment **final, demandable and unappealable.**[14] Thus, petitioner has lost its right to contest the assessment before this Court.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[15] the Supreme Court ruled:

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13 Underscoring supplied.

14 *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, 17 November 2010, 635 SCRA 162.

15 549 Phil. 886, 903 (2007).

> ...
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> The inevitable conclusion is that ... **failure to protest the assessments within the 30-day period ... 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.
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> ...

In *Zamboanga Forest Managers Corporation v. Pacific Timber and Supply Co.*[16], the Supreme Court also ruled, *viz.*:

> ...
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> ... Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court - not even the Supreme Court - has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error. The judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[17]
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> ...

Indubitably, the Court of Tax Appeals ("CTA") is a court of special jurisdiction, with power to review by appeal decisions involving disputed assessments. However, even if vested with special jurisdiction, it can only take cognizance of such matters as are clearly within its statutory authority.[18] Relative thereto, when the assessment has already attained finality, the Court has no jurisdiction over the assessment, perforce, it should dismiss any appeal disputing the same.

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16 G.R. No. 173342, 13 October 2010, 633 SCRA 82.

17 Citations omitted.

18 *Ker & Company, Ltd. v. Court of Tax Appeals, et al.*, G.R. No. L-12396, 31 January 1962, 4 SCRA 160.

WHEREFORE, with the foregoing, respondent Commissioner of Internal Revenue's Motion for Reconsideration is **GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated 23 January 2020 is hereby amended to read as follows:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice