REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ERMILO TAN NG HUA,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9912

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
DEC 07 2021 3:30pm

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DECISION

MANAHAN, *J.:*

This is a *Petition for Review* filed on August 23, 2018 by petitioner Ermilo Tan Ng Hua against respondent Commissioner of Internal Revenue, praying that Assessment No. 065-10-114-096-192 issued pursuant to *Letter Notice* (LN) No. 065-RLF-10-00-00071 dated September 3, 2012 or *Assessment Notices* for deficiency value-added tax (VAT) and income tax, in the aggregate amount of ₱2,260,073.57, for taxable year 2010, be cancelled.[1]

THE PARTIES

Petitioner Ermilo Tan Ng Hua is of legal age, married, Filipino, with registered address at Quirino Hi-way, Panaytayan, Ragay, Camarines Sur, where he prefers to be served with court notices and processes. He is the party appealing the Decision dated July 16, 2018 of respondent.[2]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting

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[1] Statement of the Case, Pre-Trial Order dated October 11, 2019, Docket, p. 177.

[2] Par. 3, *Petition for Review*, *vis-a-vis* Par. 1, *Answer*, Docket, pp. 11 and 61, respectively.

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upon protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He can be served with pleadings, notices and other processes at Bureau of Internal Revenue (BIR) National Office Bldg., BIR Road, Diliman, Quezon City.[3]

THE FACTS

On September 3, 2012, the BIR issued the aforesaid LN No. 065-RLF-10-00-00071 to petitioner,[4] informing him that based on the computerized matching conducted on the information provided by third-party sources against his VAT returns for calendar year 2010, there was an underdeclaration of local purchases in the amount of ₱8,786,015.36, computed as follows:

Per Summary List of Sales submitted by your suppliers	₱ 36,171,064.44
Domestic purchases per Tax Returns filed	₱ 27,385,049.08
Under-declaration of Local Purchases	₱ 8,786,015.36
Percentage (%) of Discrepancy	24.29

The said LN was received by Mr. Manuel Llagas, petitioner's former bookkeeper, on September 10, 2012.[5]

Subsequently, the BIR – Revenue Region No. 10, Legazpi City, issued the *Preliminary Assessment Notice* (PAN) dated October 21, 2013, which was received by petitioner on even date, assessing the latter with deficiency VAT and income tax for taxable year 2010, in the aggregate amount of ₱2,229,888.14.[6]

Thereafter, the *Formal Letter of Demand* (FLD) with *Assessment Notice* No. 065-10-114-096-192 dated November

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[3] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 158.
[4] Exhibit "R-1", BIR Records, p. 1.
[5] Exhibit "R-1", BIR Records, p. 1; Q&A 12 to 13, *Judicial Affidavit* of Ermilo Tan Ng Hua dated December 28, 2018 (Exhibit "P-3"), p. 106; Transcript of Stenographic Notes (TSN) for the hearing held on October 8, 2019, pp. 10 to 13.
[6] Exhibit "R-4", BIR Records, pp. 47 to 49.

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14, 2013 was issued against petitioner, reiterating the assessment with adjustment of interest, in the total amount of ₱2,260,073.57.[7] The FLD was accompanied by a "*Details of Discrepancies*".[8]

On December 18, 2013, petitioner filed with the BIR its protest letter,[9] wherein petitioner, *inter alia*, requested for an extension of three (3) months to reconstruct his other documents. In the letter dated February 6, 2014,[10] however, the BIR allowed petitioner only a period of sixty (60) days from December 18, 2013, within which to submit his documents in support of his protest. Petitioner then submitted new documents in support thereof via his letter dated February 19, 2014.[11]

The BIR then, through Regional Director Esmeralda M. Tabule, issued the *Final Decision on Disputed Assessment* (FDDA) dated March 6, 2014,[12] stating, among others, that petitioner submitted his supporting documents "three days beyond the due date", and thus, the payment of the deficiency income tax and VAT was requested. The said FDDA was received by petitioner on March 7, 2014.[13]

Thereafter, petitioner filed his *Request for Reconsideration* dated April 10, 2014 before then Commissioner of Internal Revenue, Hon. Kim S. Jacinto-Henares.[14] Respondent, however, affirmed the subject tax assessments in his *Decision* dated July 16, 2018.[15]

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[7] Par. 6.3, *Petition for Review*, *vis-a-vis* Par. 1, *Answer*, Docket, pp. 13 and 61, respectively.
[8] Par. 6.4, *Petition for Review*, *vis-a-vis* Par. 1, *Answer*, Docket, pp. 13 and 61, respectively.
[9] BIR Records (Exhibit "R-12") p. 58.
[10] Exhibit "R-6", BIR Records (Exhibit "R-12") p. 61.
[11] Refer to Exhibits "R-7" and "P-2", BIR Records (Exhibit "R-12"), at p. 87.
[12] Exhibits "R-7" and "P-2", BIR Records (Exhibit "R-12"), pp. 86 to 87.
[13] Exhibit "P-2-A", BIR Records (Exhibit "R-12"), at p. 87.
[14] BIR Records (Exhibit "R-12") pp. 99 to 100.
[15] Exhibit "P-1", Docket, pp. 27 to 33.

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On August 23, 2018, petitioner filed the instant *Petition for Review.*[16] The case was initially raffled to this Court's Second Division. Subsequently, in the Order dated September 24, 2018,[17] the case was transferred to the First Division of this Court.

After two (2) extensions granted by this Court,[18] respondent submitted his *Answer* on December 5, 2018,[19] interposing the following special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the instant petition; (2) the Court's power of judicial review over decisions of respondent on disputed assessments is by nature exclusive and appellate, and as such, the Court may not touch upon matter which petitioner is barred from disputing, having failed to do so at the administrative level; (3) under Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, all returns are subject to examination by respondent and in case of discrepancy, the law merely requires that notice be given to the taxpayer; (4) a *Letter of Authority* (LOA) is irrelevant in this case; (5) contrary to petitioner's claim, the subject assessment has factual and legal bases; and (6) tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if there is any.

The Pre-Trial Conference was initially scheduled on March 7, 2019.[20] Subsequently, on February 27, 2019, respondent filed a *Motion To Reset Pre-Trial Conference.*[21] Acting on the said *Motion*, the Court cancelled the scheduled Pre-Trial Conference, and ordered the parties to immediately proceed to, and to personally appear or through a representative, before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).[22] However, since the parties decided not to have their case mediated before the PMC-CTA,[23]

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[16] Docket, pp. 10 to 26.
[17] Docket, p. 41.
[18] Resolution dated October 29, 2018 and November 23, 2018, Docket, pp. 52 and 58, respectively.
[19] Docket, pp. 61 to 75.
[20] Notice of Pre-trial Conference dated January 11, 2019, Docket, pp. 82 to 83.
[21] Docket, pp. 93 to 95.
[22] Resolution dated March 4, 2019, Docket, pp. 99 to 100.
[23] No Agreement to Mediate dated June 17, 2019, Docket, p. 126.

the Pre-Trial Conference was reset to, and held on, August 15, 2019.[24]

On March 4, 2019, the *Pre-Trial Brief (For Petitioner)* was filed;[25] and on August 9, 2019, the *Respondent's Pre-Trial Brief* was submitted.[26]

In the meantime, on February 15, 2019, respondent transmitted the *BIR Records* for this case.[27]

On September 18, 2019, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[28] In the Resolution dated October 3, 2019,[29] the Court approved the said JSFI, and deemed the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated October 11, 2019 was issued.[30]

As trial ensued, petitioner presented his testimonial and documentary evidence. He testified on direct examination by way of a Judicial Affidavit, and was subjected to cross examination.[31]

Petitioner filed his *Formal Offer* on October 23, 2019.[32] Respondent, however, failed to file his comment thereon.[33] In the Resolution dated January 31, 2020,[34] the Court admitted all of petitioner's offered exhibits.

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[24] Resolution dated July 5, 2019, Docket, p. 129; Minutes of the hearing on and Order dated August 15, 2019, Docket, pp. 148 to 149, and 152 to 153, respectively.
[25] Docket, pp. 101 to 103.
[26] Docket, pp. 131 to 134.
[27] Respondent's *Compliance* dated February 12, 2019, Docket, pp. 86 to 88.
[28] Docket, pp. 158 to 161.
[29] Docket, p. 164.
[30] Docket, pp. 177 to 182.
[31] Exhibit "P-3", Docket, pp. 104 to 109; Minutes of the hearing held on, and Order dated, October 8, 2019, Docket, pp. 173 to 173-B, and 174 to 174-A, respectively.
[32] Docket, pp. 184 to 185.
[33] Records Verifications dated December 5, 2019 issued by the Judicial Records Division of this Court, Docket, p. 188.
[34] Docket, pp. 194 to 195.

For his part, respondent likewise presented his testimonial and documentary evidence. He offered the testimony of Revenue Officer Jane M. Garfin.[35]

Respondent's Formal Offer of Evidence was posted on June 16, 2020.[36] Petitioner's *Comment To Respondent's Formal Offer of Evidence* was filed on July 30, 2020.[37] In the Resolution dated October 9, 2020,[38] the Court admitted all of respondent's offered exhibits.

Respondent's *Memorandum* was posted on November 17, 2020,[39] while *Petitioner's Memorandum* was filed on December 18, 2020.[40]

This case was considered submitted for decision on January 12, 2021.[41]

THE ISSUE

As stipulated, the issue for the Court's determination is as follows:

> "In the alternative that the Honorable Court has jurisdiction over the instant petition, whether the petitioner is liable for the assessed deficiency tax for the taxable year 2010."[42]

Petitioner's arguments:

Petitioner argues that the Court correctly assumed jurisdiction to review the appealed Decision of respondent, as

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[35] Exhibit "R-13", Docket, pp. 140 to 147; Minutes of the hearing held on, and Order dated, March 12, 2020, Docket, pp. 196 to 201.
[36] Docket, pp. 204 to 208.
[37] Docket, pp. 217 to 219.
[38] Docket, pp. 226 to 227.
[39] Docket, pp. 228 to 243.
[40] Docket, pp. 247 to 263.
[41] Resolution dated January 12, 2021, Docket, p. 269.
[42] Issue, JSFI, Docket, p. 158.

he timely filed the instant petition on August 23, 2019; that the subject Assessment No. 065-10-114-096-192, as embodied in the FDDA dated March 6, 2014, is void *ab initio* because no LOA was ever issued; and that the subject assessment has no factual and legal bases.

Respondent's counter-arguments:

Respondent counters that the Court has no jurisdiction over the instant petition; that the Court's power of judicial review over decisions of respondent on disputed assessments is by nature exclusive and appellate, and as such, the Court may not touch upon matter which petitioner is barred from disputing, having failed to do so at the administrative level; that under Section 6(A) of the NIRC of 1997, all returns are subject to examination by respondent and in case of discrepancy, the law merely requires that notice be given to the taxpayer; that an LOA is irrelevant in this case; that contrary to petitioner's claim, the subject assessment has factual and legal bases; and that tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if there is any.

THE COURT'S RULING

The instant *Petition for Review* should be dismissed.

Section 228 of the NIRC of 1997 provides:

> "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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> xxx xxx xxx
>
> 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.

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. *(Emphasis and underscoring supplied)*

Relative thereto, Section 11 of Republic Act (RA) No. 1125[43], as amended by RA No. 9282[44], reads, in part, as follows:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.

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[43] AN ACT CREATING THE COURT OF TAX APPEALS.

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

> **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA <u>within thirty (30) days from the receipt of the decision</u> or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc." *(Emphasis added)*

Based on the foregoing provisions, petitioner has thirty (30) days from the receipt of the decision or ruling or after the expiration of the period fixed by law for action of respondent, within which to file an appeal before this Court. Otherwise, the Court has no jurisdiction to review the appeal.

Apropos, 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. The court could not decide the case on the merits.[45]

Moreover, it has been ruled that 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.[46] The right to

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[45] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

[46] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

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appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[47] Furthermore, the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court 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]

In this case, it was established that respondent issued his *Decision* dated July 16, 2018,[49] denying, in effect, petitioner's *Request for Reconsideration* dated April 10, 2014, and affirming the FDDA dated March 6, 2014; and that the instant *Petition for Review* was filed on August 23, 2018.[50] However, there is no showing as to when the said *Decision* was received by petitioner. Needless to state, to determine the reckoning date of the period to appeal is of paramount importance, especially considering that respondent has raised the issue of jurisdiction.

Moreover, as to the allegation of the petitioner that it received the Decision of the respondent on August 3, 2018, it is noteworthy that no documentary evidence was presented by petitioner to show such date of receipt. Relative thereto, a mere allegation is not evidence, and the person who alleges has the burden of proving his or her allegation with the requisite quantum of evidence, which in civil cases is preponderance of evidence.[51]

Furthermore, upon inquiry of the Court at the hearing held on October 8, 2019, petitioner admitted that he could no longer find the files showing the date of receipt of the said Decision.[52] Clearly then, there is no evidence that establishes

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[47] *Ibid.*
[48] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.
[49] Exhibit "P-1", Docket, pp. 27 to 33.
[50] Docket, pp. 10 to 26.
[51] *Tan, Jr. vs. Hosana*, G.R. No. 190846, February 3, 2016.
[52] TSN for the hearing held on October 8, 2019, p. 17.

the fact of receipt by petitioner of respondent's *Decision* dated July 16, 2018.

In view of petitioner's failure to prove the date of receipt of the *Decision* on August 3, 2018, the thirty (30) day period to file an appeal shall be reckoned from July 16, 2018—the date of issuance of the said *Decision*. Counting from this latter date, petitioner has until August 15, 2018, within which to file his appeal thereto.

Considering that the instant *Petition for Review* was filed only on August 23, 2018 or beyond the thirty (30)-day reglementary period to file an appeal, the Court was not endowed with jurisdiction to take cognizance of the instant case, in accordance with the aforequoted Section 228 of the NIRC of 1997, and Section 11 of RA No. 1125, as amended by RA No. 9282. Consequently, this Court is not empowered to decide the instant case on the merits, and must, accordingly, dismiss the same.

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice