REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ASIA RENAL CARE PHILS., INC.,
Petitioner,

CTA *EB* NO. 1502
(CTA Case No. 8832)

-*versus*-

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 2018 3:41 p.m.

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DECISION

BAUTISTA, J.:

The Case

This is a Petition for Review[1] under *Section 3(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals*[3] *("RRCTA")*, seeking the

[1] *Rollo, CTA EB No. 1502, Petition for Review ("PFR")*, pp. 8-82, with annexes.
[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(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 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.

[3] *A.M. No. 05-11-07-CTA*, November 22, 2005.

reversal and setting aside of the Resolutions of the Court of Tax Appeals ("CTA") First Division ("Court in Division") dated May 5, 2016[4] and August 10, 2016[5]; and praying for the Court *En Banc* to render a decision ordering the cancellation of the deficiency income tax, value-added tax ("VAT"), and expanded withholding tax ("EWT") assessments for calendar year ("CY") 2010 amounting to Php24,593,630.95.[6]

The Parties

Petitioner Asia Renal Care (Philippines), Inc., doing business under the name and style of Nephrocare,[7] is a corporation duly organized and existing under, and by virtue of, the laws of the Republic of the Philippines.[8] It holds office at 75 Quezon Avenue, Sto. Domingo 1, Quezon City, and duly registered with the Bureau of Internal Revenue ("BIR") under Tax Identification Number 200-547-897.[9]

Respondent Commissioner of Internal Revenue ("CIR"), is the duly appointed Commissioner of the BIR, vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to issue assessments and decide on disputed assessments; and to cancel and abate tax liabilities pursuant to the provisions of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and other tax laws, rules, and regulations.[10]

The Facts

On November 25, 2011, the BIR through Regional Director Jonas DP. Amora ("RD Amora") issued Letter of Authority ("LOA")-038-2011-00001461[11], authorizing Revenue Officer ("RO") Alexander

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[4] *Records, CTA Case No. 8832, May 5, 2016 Resolution,* pp. 682-689; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario on leave and Associate Justice Cielito N. Mindaro-Grulla concurring.
[5] *Records, August 10, 2016 Resolution,* pp. 725-728; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario taking no part and Associate Justice Cielito N. Mindaro-Grulla concurring.
[6] *Rollo, PFR, Prayer,* p. 51.
[7] *Records, Exhibit "P-33," Amended Articles of Incorporation,* p. 625.
[8] *Id., Joint Stipulation of Facts and Issues ("JSFI"), Admitted Facts, par. 2,* p. 485.
[9] *Id.*
[10] *Id., par. 1,* p. 485.
[11] *Id., Exhibit "P-28," Letter of Authority ("LOA"),* p. 612.

Manaois and Group Supervisor ("GS") Liberty Sagad of Revenue District No. 038-North Quezon City to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2010 to December 31, 2010.[12]

On January 15, 2014, the Formal Letter of Demand[13] ("FLD") with attached Details of Discrepancies and the Final Assessment Notices[14] ("FANs") were issued by RD Amora against petitioner for alleged deficiency income tax, VAT, and withholding EWT in the aggregate amount of Php24,593,630.95, inclusive of interest.[15]

As a result, petitioner wrote the Alleged Protest Letter[16] addressed to RD Amora and received by the latter's office on February 14, 2014, stating that it would like to contest such assessments, and that it requests for a period of sixty (60) days to prepare supporting documents.

On April 29, 2014, RD Amora issued a Final Letter[17] stating that petitioner's request for reinvestigation/reconsideration of the assessments, *i.e.* Alleged Protest Letter, is not in compliance with the pertinent provisions of *Revenue Regulations ("RR") No. 12-99, as amended by RR No. 18-13 ("RR No. 12-99")*.[18] RD Amora explained that, accordingly, the tax liabilities covering the assessments have become final, executory, and demandable.[19]

In view of RD Amora's Final Letter, petitioner filed the present Petition for Review[20] on June 6, 2014. Consequently, the Court in Division issued Summons[21] on June 13, 2014, and respondent submitted his Answer[22] on August 1, 2014.

On February 3, 2016, respondent filed his Motion to Dismiss[23]; to which petitioner responded through its Comment/Opposition (Re:

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[12] *Records, JSFI, Admitted Facts, par. 3,* p. 485.
[13] *Id., Exhibit "P-29," Formal Letter of Demand ("FLD"),* pp. 613-616.
[14] *Id., Exhibit "P-30," Final Assessment Notices ("FANs"),* pp. 617-619.
[15] *Id., JSFI, Admitted Facts, par. 4,* p. 485.
[16] *Id., Exhibit "P-31.1," Protest to FANs,* p. 620.
[17] *Id., Exhibit "P-32," Reply to Protest to FANs,* p. 621.
[18] *Records, JSFI, Admitted Facts, par. 5, p. 487.*
[19] *Id.*
[20] *Id., Petition for Review,* pp. 14-181, with annexes.
[21] *Id., Summons,* p. 105.
[22] *Id., Answer,* pp. 110-114.
[23] *Id., Motion to Dismiss,* pp. 651-654.

Motion to Dismiss Dated February 2, 2015)[24] submitted to the Court in Division on February 26, 2016.

On May 5, 2016, the Court in Division issued the first assailed Resolution ("May 5, 2016 Resolution"). It relied on *Section 1*[25]*, Rule 9, Section 8*[26]*, Rule 15 of the Rules of Court,* and the Supreme Court case of *Boston Equity Resources, Inc. v. Court of Appeals, et. al.*[27], in dismissing petitioner's claim for having no jurisdiction over the subject matter. It likewise ruled that respondent cannot be estopped from raising the issue of jurisdiction of the Court in Division. It cited the case of *Spouses Erorita v. Spouses Dumlao*[28], which states that estoppel by laches may only be invoked to bar the defense of lack of jurisdiction if the factual *milieu* is analogous to the case of *Tijam v. Sibonghanoy*[29] *("Tijam"),* and concluded that the circumstances of the present case are not analogous to that of the *Tijam* case. It went on to discuss that the Final Letter issued by RD Amora and respondent's Answer to the Petition for Review both state that the assessments have already become final, executory, and demandable; hence, estoppel by laches cannot be invoked by petitioner to bar the defense of lack of jurisdiction over the subject matter. It then found merit in the Motion to Dismiss, pursuant

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[24] *Records, Comment/Opposition (Re: Motion to Dismiss Dated February 2, 2015),* pp. 664-675.

[25] SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, <u>when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.</u>

[26] SECTION 8. *Omnibus motion.* — <u>Subject to the provisions of Section 1 of Rule 9</u>, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

[27] G.R. No. 173946, June 19, 2013, 699 SCRA 16; "[l]ack of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived xxx subject, however, to the principle of estoppel by laches."

[28] G.R. No. 195477, January 26, 2016, quoting as follows:

> As a general rule, lack of jurisdiction over the subject matter may be raised at any time, or even for the first time on appeal. An exception to this rule is the principle of estoppel by laches.
>
> Estoppel by laches may only be invoked to bar the defense of lack of jurisdiction if the factual milieu is analogous to Tijam v. Sibonghanoy. In that case, lack of jurisdiction was raised for the first time after almost fifteen (15) years after the questioned ruling had been rendered and after the movant actively participated in several stages of the proceedings. It was only invoked, too, after the CA rendered a decision adverse to the movant.
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> In Figueroa v. People, we ruled that the failure to assail jurisdiction during trial is not sufficient for estoppel by laches to apply. When lack of jurisdiction is raised before the appellate court, no considerable length of time had elapsed for laches to apply. Laches refers to the "negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."

[29] G.R. No. L-21450, April 15, 1968, 23 SCRA 29.

to *Section 228*[30] *of the NIRC*, as implemented by *Section 3.1.4*[31] *of RR No. 12-99*, which require that the protest should state the facts and laws upon which it is based; otherwise, the protest shall be considered void and without force and effect. Due to petitioner's failure to comply with the requirement to provide the basis/bases of its protest, its Alleged Protest Letter was considered void; and accordingly, the assessments have attained finality by mere lapse of time and is no longer open to dispute and discussion. The Court in Division likewise stressed that the assessments did not become disputed assessments subject to the Court's review and jurisdiction under *Section 7(a)(1)*[32] *of Republic Act ("RA") No. 1125, as amended by RA No. 9282*. The dispositive portion[33] of the May 5, 2016 Resolution reads as follows:

> **WHEREFORE**, in view [o]f the foregoing, respondent's **Motion to Dismiss** is **GRANTED**. Accordingly, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.
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> **SO ORDERED.**[34]

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[30] SECTION 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 preassessment notice shall not be required in the following cases:

xxx xxx xxx

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.

[31] 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. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

xxx xxx xxx

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or
jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

[32] SEC. 7. *Jurisdiction.*- The CTA shall exercise:

(a) 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 in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[33] *Records, May 5, 2016 Resolution, Dispositive Portion*, p. 689.

[34] Emphases retained.

On May 26, 2016, petitioner filed its Motion for Reconsideration (Re: Resolution dated May 5, 2016)[35]; with no comment from respondent despite notice.[36]

Thereafter, the Court in Division issued the second assailed Resolution[37] dated August 10, 2016 ("August 10, 2016 Resolution"), wherein it found no merit in petitioner's Motion for Reconsideration and found that the issues presented are a mere rehash of petitioner's previous arguments in its Comment/Opposition (Re: Motion to Dismiss dated February 2, 2015), which were sufficiently passed upon and fully discussed in the May 5, 2017 Resolution. As to petitioner's argument that the Court in Division must exercise jurisdiction in order to cancel a deficiency tax assessment that has prescribed and was issued in violation of petitioner's right to due process, the Court in Division was likewise unmoved. It explained that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case, and not to decide the case on the merits. The dispositive portion[38] of the August 10, 2016 Resolution provides the following:

> **WHEREFORE,** finding no compelling reason to reverse the ruling of this Court in the assailed Resolution, petitioner's **Motion for Reconsideration (Re: Resolution dated May 5, 2016)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**[39]

Not satisfied with the Resolutions of the Court in Division, on August 26, 2016, petitioner filed with the Court *En Banc* its Motion for Extension of Time to File Petition for Review[40]; which was granted in a Minute Resolution[41] dated September 1, 2016.

On September 9, 2016, petitioner submitted the present Petition for Review[42]; with no comment[43] from respondent despite due notice.

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[35] *Records, Motion for Reconsideration (Re: Resolution dated May 5, 2016),* pp. 692-713, with annexes.
[36] *Id., Records Verification Report,* p. 717.
[37] *Id., August 10, 2016 Resolution,* pp. 725-728.
[38] *Id., Dispositive Portion,* p. 728.
[39] Emphases retained.
[40] *Rollo, Motion for Extension of Time to File Petition for Review,* pp. 1-6.
[41] *Id., Minute Resolution,* p. 7.
[42] *Id., PFR,* pp. 8-82, with annexes.
[43] *Id., Records Verification Report,* p. 83.

In a Resolution[44] dated February 21, 2017, the Court *En Banc* ordered the parties to submit their respective memoranda within a period of thirty (30) days from receipt thereof. Accordingly, petitioner filed its Memorandum[45] on April 21, 2017, after being granted[46] an extension; while respondent failed to file his Memorandum *per* Records Verification Report[47] dated April 26, 2017.

On May 23, 2017, the Court promulgated a Resolution[48] submitting the case for decision; hence, this Decision.

The Assigned Errors/Issues[49]

WHETHER THE COURT IN DIVISION ERRED IN DISMISSING THE PETITION FOR REVIEW.

Petitioner's Arguments[50]

Petitioner avers that the deficiency tax assessments did not attain finality because a request for reconsideration was timely filed; that respondent is estopped from questioning the jurisdiction of the Court in Division over petitioner's judicial protest of the deficiency tax assessments; that the dismissal of the Petition for Review based on the Motion to Dismiss was not supported by law and jurisprudence; and that the ends of justice will be served if the Court in Division assumed jurisdiction over the case to examine the timeliness and propriety of the deficiency tax assessments.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review, and sees no ample justification to reverse the assailed Resolutions.

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[44] *Rollo, Resolution,* pp. 85-86.
[45] *Id., Memorandum,* pp. 91-136.
[46] *Rollo, Motion for Extension of Time to File Memorandum,* pp. 87-89; *Rollo, Minute Resolution,* pp. 90-91.
[47] *Rollo, Records verification Report,* p. 137.
[48] *Id., Resolution,* pp. 139-140.
[49] *Id., PFR, Summary of Arguments,* p. 14.
[50] *Id., Memorandum, Discussion,* pp. 98-133.

The assessments attained finality for petitioner's failure to file a valid protest.

Petitioner claims that the deficiency tax assessments did not attain finality because a request for reconsideration was timely filed. Even if the Court *En Banc* assumes that petitioner's Alleged Protest Letter was filed within the prescribed period of thirty (30) days from receipt of the FANs, the Court *En Banc* does not agree that said letter can be considered a valid request for reconsideration.

Section 228 of the 1997 NIRC clearly provides that an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof in such form and manner as may be prescribed by implementing rules and regulations - which is specifically *Section 3.1.4 of RR No. 12-99*. The latter requires the following to be stated in the protest, otherwise, the same shall be considered void and without force and effect: *(1)* the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, *(2)* date of the assessment notice, and *(3)* the applicable law, rules and regulations, or jurisprudence on which his/her/its protest is based.

It is undisputed that the Alleged Protest Letter states only the following:

> We received the tax assessment notice to Asia Renal Care Phils. Inc. with TIN: 200-547-897-000 dated January 15, 2014 last January 20, 2014. The 1708 with demand number 39-8150-10 amounting to Php24,593,630.95 is for taxable year 2010.
>
> We would like to contest such assessment and would like to request to be given 60 days to prepare supporting documents.
>
> Please find enclosed assessment notice for your reference.

While petitioner complied with requirement number 2, *i.e.* stating the date of issuance of the FANs, it failed to indicate whether

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the protest is in the nature of a reconsideration or a reinvestigation; and if it is the latter, it also did not specify the pieces of evidence it intends to present. Moreover, no legal basis was provided to support the alleged protest. In view of petitioner's non-compliance with the relevant provision of law and regulations, petitioner's purported protest is void. Instead of filing the above letter expressing its interest to contest the assessment, petitioner should have filed with the BIR an actual protest letter in accordance with *Section 228 of the 1997 NIRC*, as implemented by *Section 3.1.4 of RR No. 12-99*.

This goes without saying that petitioner only had thirty (30) days from receipt of the FANs to file a valid protest thereto. Due to the lapse of the prescribed period without a proper protest being filed with the BIR, petitioner's right to question the assessment has prescribed under *Section 228 of the 1997 NIRC*.

Once an assessment has become final for failure of the taxpayer to file a protest within the time allowed, the validity or correctness of the assessment may no longer be questioned on appeal.[51] Accordingly, the Court in Division did not err in ruling that the assessments attained finality for petitioner's failure to file a valid protest.

Respondent is not estopped from questioning the jurisdiction of the Court in Division.

As to petitioner's claim that respondent is estopped from questioning the jurisdiction of the Court in Division over petitioner's judicial protest of the deficiency tax assessment, the Court *En Banc* finds no merit thereto.

The doctrine of estoppel springs from equitable principles and the equities in the case.[52] It is designed to aid the law in the administration of justice where without its aid injustice might result.[53]

The elements of estoppel are: *(1)* the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct

[51] *Commissioner of Internal Revenue v. Hambrecht and Quist*, G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[52] *Philippine National Bank v. Court of Appeals*, G.R. No. L-30831, November 21, 1979, 94 SCRA 368.
[53] *Id.*

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or silence; *(2)* the other in fact relies, and relies reasonably or justifiably, upon that communication; *(3)* the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *(4)* the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[54]

As already pointed out by the Court in Division in its May 5, 2017 Resolution, the Final Letter issued by RD Amora and respondent's Answer to the Petition for Review both state that the assessments have already become final, executory, and demandable. RD Amora's Final Letter reads as follows:

> Please be informed that your request for investigation/reconsideration of the assessment for taxable year 2010, was not in compliance with pertinent provisions of [RR] No. 12-99, as amended by RR [No.] 18-2013 quoted hereunder:
>
> xxx xxx xxx
>
> In view thereof, your tax liability per Assessment Notice/[FLD] No. 39-b150-10 dated January 15, 2014 is final, executory and demandable. xxx

It must be pointed out that RD Amora promptly informed petitioner that its Alleged Protest Letter filed on February 14, 2014 failed to comply with the relevant regulations when he issued the Final Letter 74 days thereafter, *i.e.* on April 29, 2014.

Upon receipt of the Final Letter, petitioner filed a Petition for Review with the court *a quo* on June 6, 2014. On its part, respondent was adamant in raising the defense that the assessments are already final, executory, and demandable, pursuant to *Section 228 of the 1997 NIRC* and *Section 3.1.4 of RR No. 12-99,* in his Answer[55] filed on August 1, 2014.

In fact, respondent continuously and persistently pointed out the finality of the assessment to petitioner in his Respondent's Pre-Trial

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[54] *Philippine Bank of Communications v. Court of Appeals, et. al.,* G.R. No. 109803, April 20, 1998, 289 SCRA 178.

[55] *Rollo, Answer, Special and Affirmative Defenses, pars. 6 and 7,* pp. 111-112.

Brief[56] filed on October 17, 2014, his Opposition to Petitioner's Motion to Set Case for Preliminary Hearing to Resolve Issue of Prescription[57] submitted to the Court in Division on October 22, 2014, and finally in his Motion to Dismiss[58] filed on February 3, 2016.

Applying the elements of estoppel to the facts of the case, all the requirements are absent or inapplicable since respondent has knowledge that the assessments have attained finality, which he timely communicated to petitioner in good faith and in several instances, never claiming anything to the contrary with the intention to mislead petitioner. Accordingly, respondent is not estopped from questioning the jurisdiction of the Court in Division.

The Court in Division validly dismissed the Petition for Review.

Petitioner claims that the dismissal of the Petition for Review was not supported by law and jurisprudence; and that the ends of justice will be served if the Court in Division assumed jurisdiction over the case to examine the timeliness and propriety of the deficiency tax assessment. The Court *En Banc* is not persuaded.

Petitioner should be reminded that lack of jurisdiction over the subject matter can always be raised anytime since jurisdictional issues cannot be waived[59], as provided in *Section 1, Rule 9 of the 1997 Rules of Court*, to wit:

> RULE 9
> Effect of Failure to Plead
>
> SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, <u>when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter</u>, that there is another action pending between the same parties for the same

[56] *Records, Respondent's Pre-Trial Brief, Proposed Stipulation, par. 2,* p. 186.
[57] *Id., Opposition to Petitioner's Motion to Set Case for Preliminary Hearing to Resolve Issue of Prescription,* pp. 288-290.
[58] *Id., Motion to Dismiss,* pp. 651-653.
[59] *Boston Equity Resources, Inc. v. Court of Appeals, et. al.,* G.R. No. 173946, June 19, 2013.

> cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.[60]

Therefore, a court may dismiss a case when any of the four (4) grounds referred above is present. These are: *(1)* lack of jurisdiction over the subject matter; *(2) litis pendentia; (3) res judicata;* and *(4)* prescription of action.[61]

The Court *En Banc* would like to emphasize that jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[62] In order for a court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter, which is the power to hear and determine the general class to which the proceedings in question belong, and is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[63] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[64]

Therefore, the Court in Division correctly dismissed the Petition for Review brought before it, instead of deciding the case on the merits.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Resolutions dated May 5, 2016 and August 10, 2016 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[60] Underscoring ours.
[61] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation, et. al.,* G.R. No. 166462, October 24, 2012, 684 SCRA 453.
[62] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,* G.R. No. 209830, June 17, 2015, 759 SCRA 311.
[63] *Id.*
[64] *Id.*

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join PJ's Dissenting Opinion)
CATHERINE T. MANAHAN
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

ASIA RENAL CARE PHILS. INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1502
(CTA Case No. 8832)

Present:

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CASTAÑEDA, JR.,
BAUTISTA,
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CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 04 2018 3:41 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I hesitate to give my assent to the *ponencia* of my learned colleague, the Honorable Associate Justice Lovell R. Bautista, denying the Petition for Review and affirming the assailed Resolutions dated May 5, 2016 and August 10, 2016 of the Court in Division.

The assailed May 5, 2016 Resolution granted respondent's Motion to Dismiss and dismissed the Petition for Review of the petitioner for lack of jurisdiction, while the equally assailed August 10, 2016 Resolution denied petitioner's Motion for Reconsideration (Re: Resolution dated May 5, 2016) for lack of merit. The Court in Division held that the assessment did not become a "disputed assessment" subject to the Court's review because the purported protest letter of petitioner to the assessment notice failed to state the facts, applicable law, rules and regulations or jurisprudence on which the protest is based; and that without a valid protest, the assessment becomes final and the Court is deprived of any authority to rule on its validity.

To begin with, the Petition for Review of petitioner before the Court in Division was seasonably filed in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended,[1] in relation to Section 11 of Republic Act (RA) No. 1125, as amended by RA 9282.[2]

The BIR through Jonas DP. Amora, Regional Director of Revenue Region 7 issued a letter dated April 29, 2014 stating that petitioner's tax liabilities per Assessment Notice/Formal Letter of Demand No. 39-b150-10 dated January 15, 2014 is final, executory and demandable as its request for reinvestigation/reconsiderstion was not in compliance with the pertinent provisions of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, hence, he requested petitioner to pay the same immediately. The letter likewise advised petitioner of its remedy to appeal to the CTA within thirty (30) days from receipt of the decision, otherwise the case will be forwarded to the BIR's Collection Division.[3] Said letter-decision of the BIR was received by petitioner on **May 9, 2014**.[4]

From receipt of the aforesaid letter-decision of the BIR, petitioner had thirty (30) days or until **June 8, 2014** to elevate such adverse decision before the CTA; hence, the filing of its Petition for Review on June 6, 2014 before the Court in Division is clearly within

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[1] SEC. 228. *Protesting of Assessment.* xxx
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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
[2] 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. xxx
[3] Exhibit "P-32"; CTA Division Docket, p. 621.
[4] Sworn Statement of Ms. Corazon R. Alcantara to Questions Propounded by Atty. Rosa Margarita A. De Guzman, Exhibit "41", CTA Division Docket, pp. 310-326, 314.

the prescribed period. As the Petition for Review was timely filed, and considering further that the CTA has exclusive jurisdiction to review, on appeal, decision of the CIR in cases involving disputed assessments or other matters arising under the National Internal Revenue Code,[5] the Court, therefore, has the authority to determine the validity of the assessment.

I note that the conclusions in the assailed Resolutions were reached by the Court in Division ***prior*** to the Supreme Court's pronouncements in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***[6] and ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[7] upholding the power and jurisdiction of the Court to resolve the issue on the authority of revenue officers to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda.

Since in the present case, the issue on the want of authority of the revenue officers to conduct the audit was not raised by petitioner before the Court in Division, the same was not resolved by the latter.

In view, however, of the aforestated recent pronouncement of the Supreme Court in ***Lancaster*** and ***Medicard***, and after carefully reviewing the records of the case, I submit that the assessment against petitioner should be cancelled and set aside for being intrinsically void.

Records disclose that the disputed assessment sprung from the Letter of Authority (LOA) No. **LOA-038-2011-00001461** dated November 25, 2011, issued by Jonas DP Amora, OIC-Regional Director, Revenue Region No. 7 of the Bureau of Internal Revenue (BIR), which authorized **Revenue Officers (RO) Alexander Manaois/Group Supervisor (GS) Liberty Sagad** of Revenue District No. 038-North Quezon City, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2010.[8] In a Memorandum of Assignment with reference No. 039-0812-01273 dated August 10, 2012, signed by Clavelina S. Nacar, Revenue District Officer, the audit and investigation of petitioner for taxable year 2010, under LOA-038-2011-00001461, was **referred to RO Agatha Kristie E.**

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[5] Section 7(a)(1) of RA 1125, as amended by RA 9282.
[6] G.R. No. 183408, July 12, 2017.
[7] G.R. No. 222743, April 5, 2017.
[8] Exhibit "P-28", CTA Division Docket, p. 612; BIR Records, p. 417.

Buizon and GS Sofia M. Gallenero.[9] Notably, there is nothing in the parties' Joint Stipulation of Facts and Issues,[10] the Pre-Trial Order,[11] and petitioner's formally offered exhibits[12] which would show that a **new LOA was issued in favor of RO Agatha Kristie E. Buizon and GS Sofia M. Gallenero.**

While petitioner failed to raise the issue of lack of authority of RO Agatha Kristie E. Buizon and GS Sofia M. Gallenero to conduct the audit, I am of the view that the Court is not precluded from considering this issue which is vital in the disposition of the case; otherwise, the Court would abdicate its primary objective which is the just resolution of disputes brought before it.[13]

Stated differently, the audit and examination made by RO Buizon and GS Gallenero were patently beyond their authority to do so. On this point, the teachings in ***Acebedo Optical Company, Inc. vs. The Honorable Court of Appeals***[14] are most enlightening:

> "xxx xxx xxx. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is *ultra vires* or beyond the ambit of authority of respondent City Mayor. ***Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*.**"

As oft-repeated, in ***Lancaster***, the Supreme Court reiterated and confirmed the CTA's power and jurisdiction to resolve the issue on the authority of the ROs to conduct the audit, **albeit the same was not raised by the parties in their pleadings or memoranda**, *viz.*:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative**.
>
> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax appeals, the CTA is not bound

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[9] BIR Records, p. 438.
[10] CTA Division Docket, pp. 484-496.
[11] CTA Division Docket, pp. 504-518.
[12] Petitioner's Formal Offer of Evidence, CTA Division Docket, pp. 533-546.
[13] *Ramona T. Logronio vs. Roberto Taleseo,* G.R. No. 134602, August 6, 1999.
[14] G.R. No. 100152, March 31, 2000.

> by the issued specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> 'SECTION 1. Rendition of judgment. – x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda**. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)

In truth, the absence of a valid LOA renders an assessment intrinsically void, irrespective of the parties' submission thereon. While a void assessment bears no fruit,[15] the principle of estoppel cannot operate to give an effect to an assessment which is void *ab initio*. For want of valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void, *viz.*:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **<u>The assessment is void for being issued without valid authority</u>**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 2008." (Boldfacing and underscoring supplied)

The crux of the present controversy revolves around whether petitioner is liable to pay the questioned deficiency income tax, value-added tax, and expanded withholding tax assessed by the BIR for taxable year 2010.[16] **The issue about the RO's authority to conduct audit necessarily relates thereto as its absence makes the assessment a nullity.** The importance of RO's authority to

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[15] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[16] Pre-Trial Order, CTA Division Docket, p. 510.

conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

The Supreme Court's pronouncement in ***Medicard*** on the matter of the authority of ROs who conducted the audit and examination of the taxpayer is instructive, *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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> xxx xxx xxx
>
> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, <u>other tax agents</u> may not validly conduct any of these kinds of examinations without prior authority**.
>
> xxx xxx xxx
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> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx xxx xxx.
>
> In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.** (Emphasis and underscoring ours)

xxx xxx xxx

xxx xxx xxx. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute**.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void." *(Citations omitted; boldfacing and underscoring supplied)*

The Supreme Court in *Medicard* declared as void the disputed assessment for lack of an LOA authorizing the ROs to examine the taxpayer's books of account and other accounting records.

Similarly, it is undisputed in this case that RO Buizon and GS Gallenero - - the revenue officer and group supervisor, respectively, who continued the audit and investigation of petitioner's books of accounts and other accounting records for taxable year 2010 - - are not named in LOA No. LOA-038-2011-00001461.

The Memorandum of Assignment with Reference No. 039-0812-01273 is categorical in stating the basis for the continuation of the audit/investigation of petitioner which is due to referral of the case by Revenue District Office No. 38, North-Quezon City per 2nd Indorsement letter dated July 12, 2012 from the Asst. Chief, Assessment Division, with Reference to LOA-038-2011-00001461 in the subject matter of said Memorandum of Assignment, viz:

> "**MEMORANDUM TO**:
> Revenue Officer/s: AGATHA KRISTIE E. BUIZON
> Group Supervisor: SOFIA M. GALLENERO
>
> Subject: Audit/Verification of the **All Internal Revenue Tax Liabilities** for Taxable Year/Period **2010** of **ASIA RENAL CARE PHILS, INC.** with **TIN # 200-547-897-000** pursuant to **LOA-038-2011-00001461** dated **November 25, 2011**
>
> **Referred**/Returned to you is the subject case/docket for:
> xxx
>
> [X] **Continuation of the audit/investigation due to referral of the case by Revenue District Office No. 38, North-Quezon City per 2nd Indorsement letter dated July 12, 2012 from the Asst. Chief, Assessment Division.**" *(Boldfacing and underscoring supplied)*

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.

1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).

2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.

3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.

4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but <u>only upon prior authorization by the Commissioner himself</u>**." *(Boldfacing supplied)*

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

xxx xxx xxx

5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, and revalidation of L/As which have already expired, **<u>shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." *(Boldfacing supplied)*

The issuance of an LOA specifying the revenue officer authorized to conduct an examination of a taxpayer's books

and other accounting records is indispensable to the validity of an assessment. In the language of ***CIR vs. Sony Philippines, Inc.***[17]:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." *(Boldfacing and underscoring supplied)*

Indeed, **the absence of a new LOA authorizing RO Buizon and GS Gallenero to continue the audit of petitioner for taxable year 2010 rendered the assessment issued pursuant thereto void.**

Unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard* and *Lancaster* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA specifically naming the ROs and GS authorized to conduct the audit. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[18]

All told, I **VOTE** to: (i) **GRANT** the Petition for Review filed by petitioner Asia Renal Care Phils., Inc.; (ii) **REVERSE and SET ASIDE** the assailed Resolutions dated May 5, 2016 and August 10, 2016 of the Court in Division; and, (iii) **CANCEL and SET ASIDE** the Formal Letter of Demand (FLD) with attached Details of

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[17] G.R. No. 178697, November 17, 2010.
[18] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.

Discrepancies and Assessment Notices No. 39-B150-10 all dated January 15, 2014 (FAN) issued against petitioner, for being void *ab initio*.

ROMAN G. DEL ROSARIO
Presiding Justice