REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

BRYAN M. TORREGOSA,
Petitioner,

-versus-

REGIONAL DIRECTOR OF THE BUREAU OF INTERNAL REVENUE, DAVAO CITY, REVENUE REGION NO. 19,
Respondent.

CTA Case No. 9703

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, JJ.

Promulgated:
SEP 09 2020 8:35 am

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DECISION

MANAHAN, *J.*:

This *Petition for Review* filed on October 23, 2017 prays that the *Formal Letter of Demand* (FLD) and the *Final Decision on Disputed Assessment* (FDDA) issued by the Commissioner of Internal Revenue against petitioner covering his alleged 2010 internal revenue liabilities be declared without legal effect on the basis of prescription.[1]

THE PARTIES

Petitioner Bryan M. Torregosa is a registered taxpayer, with postal address at Rizal Avenue, Barangay San Jose, Digos City, Davao del Sur.[2]

On the other hand, respondent is the incumbent Regional Director of the Bureau of Internal Revenue (BIR), Revenue Region No. 19–Davao City,[3] and he holds office at BIR Building, Bolton Ext., Davao City. He is impleaded in his capacity as Regional Director of the BIR for the said Revenue Region, and is mandated by law to administer and enforce

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[1] Docket, CTA Case No. 9703, Pre-Trial Order dated June 11, 2018, p. 140.
[2] *Id.*, Par. 5, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 131.
[3] *Id.* Par. 5, Summary of Admitted Facts, JSFI, p. 131.

internal revenue laws, rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees.[4]

THE FACTS

On October 5, 2011, the *Letter of Authority* (LOA) No. LOA-115-2011-00000092[5](SN:eLOA201000007208) was issued by Officer-in-Charge (OIC) Regional Director Glen A. Geraldino of Revenue Region 19 –Davao City, authorizing Revenue Officer James Cuadra and Group Supervisor Mary Urduja Ong of Revenue District Office (RDO) No. 115 - Digos City, Davao del Sur, to examine petitioner's books of accounts for all internal revenue taxes covering the period from January 1, 2010 to December 31, 2010.

The BIR issued a *Preliminary Assessment Notice* (PAN) on November 7, 2013, pertaining to the tax deficiencies of petitioner for taxable year 2010.[6]

On December 18, 2013, petitioner filed with the BIR his letter dated December 16, 2013,[7] requesting for a re-investigation of his tax case, and contesting the findings of the BIR.

On February 27, 2014, petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC*,[8] waiving the defense of prescription, and consenting to the tax assessment and/or collection for taxable year 2010, at any time or after the lapse of the period of limitations, but not later than October 31, 2015.

On October 10, 2014, respondent issued the FLD, maintaining that petitioner is liable to pay tax deficiencies, including interests and compromise penalties in the amount of ₱4,763,738.84,[9] broken down as follows:

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[4] Docket, Par. 4, *Petition for Review* vis-à-vis Par. 1, *Answer*, p. 11 and 95, respectively.
[5] BIR Records, Exhibit "R-1", pp. 16.
[6] Docket, Par. 7, *Petition for Review* vis-à-vis Par. 1, *Answer*, p. 12 and 95, respectively; BIR Records, Exhibit "P-4", Docket, p. 182; Exhibit "R-15", p. 18.
[7] *Id.*, Exhibit "P-5", p. 184 to 188.
[8] BIR Records, Exhibit "R-11", p. 32.
[9] *Id.*, Par. 10, *Petition for Review* vis-à-vis Par. 1, *Answer*, p. 12 and 95, respectively; Docket, Exhibit "P-7", p. 190; BIR Records, Exhibit "R-16", pp. 49 to 54.

Tax Type	Amount
Income tax	₱3,280,275.32
Expanded Withholding Tax (EWT)	32,612.72
Value-added tax (VAT)	1,450,850.80
Total	**₱4,763,738.84**

In response to the BIR, petitioner filed, on November 19, 2014, his letter dated November 13, 2014,[10] requesting for a re-investigation of his tax case, and contesting the tax assessments of the BIR.

Subsequently, the BIR issued an *Amended* FLD dated November 16, 2015,[11] with attached *Assessment Notices* and *Amended Details of Discrepancies*, requesting petitioner to pay deficiency income tax, EWT, and VAT for taxable year 2010, now in the total amount of ₱4,827,486.48, broken down as follows:

Tax Type	Amount
Income Tax	₱3,280,275.32
EWT	96,360.36
VAT	1,450,850.80
Total	**₱4,827,486.48**

Thereafter, on November 20, 2015, petitioner executed another *Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC*,[12] again waiving the defense of prescription, and consenting to the tax assessment and/or collection for the same taxable year, at any time or after the lapse of the period of limitations, but not later than December 31, 2016.

Petitioner then filed another letter dated December 26, 2015 on January 5, 2016,[13] again requesting for a re-investigation of his tax case, and contesting the tax assessments of the BIR.

On September 6, 2017, Regional Director Nuzar N. Balatero of Revenue Region No. 19–Davao City issued the

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[10] Docket, Exhibit "P-8", pp. 191 to 195.
[11] *Id.*, Exhibit "P-9", p. 196 to 200; BIR Records, Exhibit "R-8", pp. 92 to 96.
[12] *Id.* Exhibit "P-11", pp. 206 to 207; BIR Records, Exhibit "R-13", p. 98.
[13] *Id.*, Exhibit "P-10", pp. 201 to 204.

assailed FDDA,[14] attaching therewith *Amended Assessment Notices* and *Details of Computation*, and demanding payment from petitioner of his deficiency tax liabilities, including interests and compromise penalties, in the total amount of ₱8,424,919.29, broken down as follows:

Tax Type	Amount
Income Tax	₱6,210,263.69
EWT	109,785.07
VAT	2,104,870.52
Total	**₱8,424,919.29**

Petitioner filed the instant *Petition for Review* on October 23, 2017.[15] The case was initially raffled to this Court's Second Division.

In his *Answer* filed on February 2, 2018,[16] respondent interposed the following special and affirmative defenses, to wit:

> "**The Honorable Court of Tax Appeals did not acquire jurisdiction over the instant case.**
>
> 4. Under Section 228 of the National Internal Revenue Code of 1997 ('NIRC' for brevity), assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment, Section 228 provides that:
>
> '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 from 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.

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[14] Docket, Exhibits "P-1" and "P-13", p. 174 and p. 208, respectively; BIR Records, Exhibit "R-9", pp. 114 to 118.
[15] *Id.*, pp. 10 to 23.
[16] *Id.*, pp. 65 to 70. Respondent's *Answer* was filed via a *Motion to Admit Attached Answer*, pp. 61 to 64. The said *Motion to Admit* was admitted per this Court's Resolution dated March 21, 2018, Docket, p. 91.

> If the **protest is denied in whole or in part, or is not acted upon within one hundred** [*eighty*] **days (180) from submission of documents, the taxpayer adversely affected by the decision or inaction shall 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 supplied)

5. Petitioner claimed that he received the Final Decision on Disputed Assessment (FDDA) dated 6 September 2017 on 22 September 2017. However, a close scrutiny of the Registry Return Receipt would show that the FDDA was mailed by respondent to petitioner on 6 September 2017 and the same was duly received by petitioner's duly authorized representative, Nelson Bongabong on 14 September 2017.

6. Thus, petitioner has thirty (30) days from receipt of the FDDA or until 14 October 2017 within which to file the petition for review before the Honorable Court. However, records reveal that petitioner filed the instant petition only on 23 October 2017, way beyond the 30-day period provided by law. Clearly, the Honorable Court has no jurisdiction to act on the instant petition for review.

7. In *St. Lukes Medical Center, Inc. vs. Commissioner of Internal Revenue*, the Honorable Court *En Banc* ruled:

> 'The decisions, rulings or inaction of the CIR are necessary to vest the Court Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the impugned assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.
>
> In fine, the failure to comply with the 30-day statutory period bars the appeal and deprives the Court of Tax Appeals of jurisdiction to entertain and determine the correctness of the assessment.

On the ground that two Petitions for Review were filed by respondent one (1) day late, they should be dismissed for lack of jurisdiction. A decision rendered without jurisdiction is not a decision in contemplation of law and can never become executory. It is a total nullity and may be struck down anytime. x x x a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds anyone, and under which all acts performed and all claims flowing therefrom are void.

At this juncture, it bears emphasis that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, 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. 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. Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings. Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at anytime of the proceedings, even during this appeal. It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.

It also worth to note that the right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered. x x x 'The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional, and the failure to perfect that appeal renders the judgment of the court final and executory.'

8. In view of petitioner's belated filing of the petition for review, the Honorable Court did not acquire jurisdiction over the case.

Assuming the Honorable Court has jurisdiction, petitioner is liable for deficiency Income Tax, Expanded Withholding Tax and Value-Added Tax.

9. The receipts submitted to support the alleged overstatement of beginning inventory balance which is said to be purchases-in-stock-in-trade which were already issued with invoices but were not yet delivered until the early part of January 2010 has no effect on the assessment. The error lies on the fact that instead of presenting the beginning inventory as P1,314,272.08, petitioner carried over to the following year the cost of sales of P4,891,441.25 as inventory beginning. This resulted to the overpayment of the cost of sales and the understatement of income, and consequently, the underpayment of the tax due.

10. On the issue of double recording of purchases, it was ascertained that the total purchases per purchase invoices/official receipts submitted was different from the total purchases per Income Statement filed with respondent. No evidence was introduced by petitioner to overthrow the validity of the findings of respondent's revenue officers.

11. All presumptions are in favor if the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality on respondent's actions and assessments.

12. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos.104151 and 105563, 10 March 1995)*."

On February 7, 2018, respondent transmitted the *BIR Records* of the case.[17]

Petitioner filed a *Reply (To respondent's Answer) with Manifestation* on March 19, 2018.[18]

Respondent, on the other hand, filed a *Supplement to the Answer (filed on 2 February 2018)* on April 18, 2018,[19] adding, as his affirmative defense, that his right to assess petitioner has not yet prescribed.

In the meantime, the Pre-Trial Conference was set and held on April 26, 2018.[20] *Respondent's Pre-Trial Brief* was filed on April 18, 2018,[21] while *The Pre-Trial Brief (For the Petitioner)* was submitted on April 26, 2018.[22]

On June 5, 2018, petitioner filed a *Motion to Admit the Parties' Joint Stipulation of Facts and Issues Attached Hereto*,[23] praying for the admission of the parties' *Joint Stipulation of Facts & Issues* (JSFI)[24] as part of the records of the case. Thereafter, the Pre-Trial Order dated June 11, 2018 was issued by the Court,[25] wherein the said *Motion to Admit* was granted; the parties' JSFI was approved and adopted; and the pre-trial was deemed terminated.

During trial, petitioner presented his documentary and testimonial evidence. He offered his own testimony,[26] and that of his witness, Mr. Rey Eduardo T. Delos Reyes,[27] petitioner's bookkeeper.

On July 20, 2018, the *Petitioner's Formal Offer of Documentary Exhibits* was filed.[28] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August

[17] Docket, *Compliance* dated February 6, 2018, pp. 75 to 76.
[18] *Id.*, pp. 80 to 82.
[19] *Id.*, pp. 95 to 102.
[20] *Id.*, *Notice of Pre-Trial Conference* dated March 23, 2018, pp. 92 to 93; Docket, Minutes of the hearing held on, and Order dated, April 26, 2018, pp. 119 to 120.
[21] *Id.*, pp. 103 to 107.
[22] *Id.*, pp. 111 to 115.
[23] *Id.*, pp. 127 to 130.
[24] *Id.*, *Compliance* dated May 30, 2018, pp. 131 to 136.
[25] *Id.*, Pre-Trial Order dated June 11, 2018, pp. 140 to 144.
[26] *Id.*, Exhibit "P-15", pp. 166 to 173; Docket, Minutes of the hearing held on, and Order dated, July 11, 2018, pp. 215 to 216.
[27] *Id.*, *Judicial Affidavit of Mr. Rey Eduardo T. Delos Reyes* dated June 8, 2018, pp. 152 to 159.
[28] Docket, pp. 217 to 223. an

3, 2018.[29] In the Resolution dated September 5, 2018,[30] this Court admitted petitioner's exhibits, *except* for: (1) Exhibits "P-3" and "P-7", for failure to present their originals for comparison; and (2) Exhibit "P-12", for not being found in the records of the case.

Consequently, petitioner filed his *Motion for Reconsideration and Motion to Admit Additional Documentary Evidence and Formal Offer* on September 25, 2018,[31] praying for the partial reconsideration of this Court's Resolution dated September 5, 2018, by admitting Exhibit "P-12" as well as his additional documentary evidence marked as Exhibits "P15" and "P-15-a". Respondent failed to file his comment to the said *Motions.* [32] In the Resolution dated January 8, 2019,[33] this Court still denied Exhibit "P-12", for failure of the formally offered exhibit to correspond with the document identified and found in the records but admitted Exhibits "P15" and "P-15-a".

In the meantime, pursuant to this Court's Administrative Circular No. 02-2018 dated September 18, 2018,[34] the instant case was transferred to the First Division of this Court.

Respondent likewise presented his documentary and testimonial evidence. For his testimonial evidence, respondent offered the testimonies of the following revenue officers: Mr. James Cuadra,[35] Ms. Lilybeth A. Ganer,[36] and Ms. Shirley R. Sabornido.[37]

Respondent filed his *Formal Offer of Evidence* on January 29, 2019;[38] while petitioner filed his *Opposition to Respondent's Formal Offer of Evidence* on March 14, 2019.[39]

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[29] *Id.*, pp. 234 to 236. [N.B.: The *Comment (Re: Petitioner's Formal Offer of Evidence)* of respondent was attached in his *Motion to Admit Attached Comment to Formal Offer of Evidence*, which was admitted in the Resolution dated August 10, 2018, Docket, pp. 230 to 232, and 238, respectively].
[30] *Id.*, pp. 250 to 251.
[31] *Id.*, pp. 256 to 260.
[32] *Id.*, Records Verification dated November 6, 2018 issued by the Judicial Records Division of this Court, p. 284.
[33] *Id.*, pp. 307 to 309.
[34] *Id.*, Order dated September 24, 2018, p. 254.
[35] *Id.*, Exhibit "R-24", pp. 245 to 248-B; Docket, Minutes of the hearing held on, and Order dated, September 10, 2018, pp. 252 to 253.
[36] *Id.*, Exhibit "R-26", pp. 271 to 275; Docket, Order dated November 27, 2018, pp. 302 to 304.
[37] *Id.*, Exhibit "R-25", pp. 289 to 294; Docket, Order dated November 27, 2018, pp. 302 to 304.
[38] Docket, pp. 314 to 323.
[39] *Id.*, 327 to 329.

In the Resolution dated April 22, 2019,[40] this Court admitted all of respondent's formally offered exhibits.

On June 6, 2019, respondent filed his *Memorandum*,[41] while petitioner's *Memorandum* was filed on September 11, 2019.[42] In the Resolution dated September 23, 2019,[43] the case was deemed submitted for decision.

THE ISSUES

In their JSFI, the following issues were stipulated by the parties for this Court's resolution,[44] to wit:

> "1. Whether or not the Honorable Court has jurisdiction to act on the instant petition for review.
>
> 2. Whether or not respondent's right to assess petitioner has already prescribed.
>
> 3. Whether or not petitioner is liable for deficiency Income Tax, Expanded Withholding Tax and Value-Added Tax for taxable year 2010."

Petitioner's Arguments

Petitioner argues that he timely filed the present *Petition for Review*; that litigations before this Court should be decided on their merits and not on technicalities; that respondent's right to assess the deficiency tax of petitioner for taxable year 2010 has prescribed; and that assuming prescription does not apply, none of respondent's assessments are correct.

Respondent's Arguments

Respondent contends that this Court did not acquire jurisdiction over the instant case; that his right to assess petitioner has not yet prescribed; and that assuming this Court has jurisdiction, petitioner is liable for deficiency income tax, EWT, and VAT.

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[40] *Id.*, pp. 336 to 337.
[41] *Id.*, pp. 338 to 348.
[42] *Id.*, pp. 353 to 372.
[43] *Id.*, p. 376.
[44] *Id.*, Issues to be Resolved, JSFI, p. 132.

THE RULING OF THE COURT

The instant *Petition for Review* must fail.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It 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. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[45]

Section 228 of the National Internal Revenue Code of 1997, as amended, provides as follows:

> "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:
>
> xxx xxx xxx
>
> 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, <u>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</u>, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision**

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[45] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs,* G.R. No. 209830, June 17, 2015.

> **shall become final, executory and demandable."** *(Emphasis and underscoring added)*

Relative thereto, Section 11 of Republic Act (RA) No. 1125,[46] as amended by RA No. 9282,[47] states, 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 xxx **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.
>
> **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 **within thirty (30) days <u>from the receipt of the decision or ruling</u>** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, an appeal before this Court via a petition for review may be filed by a taxpayer within thirty (30) days **from receipt** of the denial of its protest or upon the lapse of the 180-day period from the submission of relevant supporting documents.

It is settled that the said 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] Simply put, the 30-day period to appeal is jurisdictional and non-extendible.[49]

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[46] AN CREATING THE COURT OF TAX APPEALS.

[47] 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[48] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[49] *Pangasinan Transportation Co., Inc. vs. Blaquera*, G.R. No. L-13101, April 29, 1960; *Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue*, G.R. No. L-23501, May 16, 1967.

As a corollary, the taxpayer's failure to file a petition for review with this Court within the statutory period renders the disputed assessment final, executory, and demandable, thereby precluding said taxpayer from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. [50]

In the present case, there is no question that petitioner filed the instant *Petition for Review* on October 23, 2017.[51] In arguing that he timely filed the said *Petition*, petitioner claims that he received the FDDA dated September 6, 2017 on September 22, 2017,[52] and counting from such later date, the end of the 30-day period is on October 22, 2017, which fell on a Sunday. Nonetheless, petitioner further claims that should it still be not enough to warrant the timeliness of filing the instant *Petition*, he avers that he again received the same FDDA dated September 6, 2017 on October 19, 2017, which is four (4) days prior to the filing thereof. Clearly then, according to petitioner, he timely filed his judicial appeal within thirty (30) days from receipt of the assailed FDDA.

Unfortunately, however, this Court is not swayed.

It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[53] It is axiomatic that petitioner bears the burden of proving that he timely filed the instant *Petition for Review*.

In the *Petitioner's Formal Offer of Documentary Exhibits*, petitioner points to Exhibit "P-1" (*i.e.*, its copy of the FDDA dated September 6, 2017)[54] *"to prove that the said FDDA was received by petitioner on 22 September 2017"*. [55] However, a careful examination thereof would reveal that nothing therein shows that the same FDDA was indeed received by petitioner on September 22, 2017.

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[50] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, supra.
[51] Docket, pp. 10 to 23.
[52] *Id.*, Par. 1, *Petition for Review*, p. 10;
[53] *BP Oil and Chemicals International Philippines, Inc. vs. Total Distribution & Logistic Systems, Inc.*, G.R. No. 214406, February 6, 2017.
[54] Docket, p. 174.
[55] *Id.*, p. 217.

Moreover, petitioner casually stated in his judicial affidavit that he received the first FDDA on September 22, 2017 and the second FDDA on October 19, 2017.[56] When asked by respondent's counsel, during his cross-examination[57], for empirical proof that he indeed received the alleged FDDAs on the said dates, other than his bare allegation, petitioner answered as follows:

> "ATTY. MANZANARES:
> Q. Moving on Mr. Witness, on your Judicial Affidavit specifically in Question No. 4, you were asked, when did you receive the FDDA, Final Decision on Disputed Assessment, and you answered, 'I received the first FDDA on September 22, 2017 and the second FDDA on October 19, 2017'. Mr. **Witness, do you have any proof of receipt of FDDA on September 22 and October 19?**
>
> MR. TORREGOSA:
> A. **No, sir.**
>
> ATTY. MANZANARES:
> Q. You have no proof of receipt of first FDDA on September 22, 2017?
>
> MR. TORREGOSA:
> A. Yes, sir.
>
> ATTY. MANZANARES:
> Q. Yes? What is your answer, is it a yes or a no?
>
> MR. TORREGOSA:
> A. Yes, sir.
>
> ATTY. MANZANARES:
> Q. **You would like to assume that you have a proof of your receipt?**
>
> MR. TORREGOSA:
> A. **I assume we have received.**
>
> ATTY. MANZANARES:
> Q. You received. And what I am asking is your proof of receipt if you have any to support your answer?
>
> MR. TORREGOSA:
> A. I received on September 22, sir and the second was on October 19, Your Honors.

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[56] *Id.*, A4, p. 5 of the *Judicial Affidavit of Mr. Bryan M. Torregosa* dated July 6, 2018, p. 167.
[57] *Transcript of Stenographic Notes* at the hearing held on July 11, 2018, pp. 13 to 14.

JUSTICE CASTAÑEDA:
Did you acknowledge receipt?

MR. TORREGOSA:
A. **Actually it was my Secretary.**

JUSTICE CASTAÑEDA:
In the BIR Records, is there any acknowledgement?

ATTY. MANZANARES:
Based on record, Your Honor, the FDDA does not bear any receipt particularly September 22, 2017.

xxx xxx xxx." *(Emphases added)*

Clearly from the aforequoted testimony, petitioner did not present any proof that he received the subject FDDA, either on September 22, 2017 or on October 19, 2017. In fact, it is clear that petitioner points to his secretary who allegedly acknowledged receipt of the said FDDA and petitioner merely assumed receipt of the FDDA on the said dates. Oddly, petitioner did not offer the testimony of his secretary, who could have easily shed light on the matter, especially since she was the one who supposedly has the first-hand knowledge of the actual receipt of the FDDAs. *Apropos*, evidence willfully suppressed would be adverse if produced.[58]

On the other hand, to prove that the instant *Petition for Review* was filed out of time, respondent's Revenue Officer Shirley R. Sabornido testified that petitioner received the FDDA dated September 6, 2017 on September 14, 2017.[59] To corroborate her testimony, respondent presented the Registry Return Receipt[60] dated September 6, 2017 of the FDDA to show that the latter was signed and received by petitioner, through a certain Mr. Nelson Bongabong. In this connection, respondent claims that Mr. Bongabong was petitioner's authorized representative,[61] which remained uncontroverted, and was never questioned, nor disputed by petitioner, during trial.

Hence, counting thirty (30) days from September 14, 2017, petitioner had until October 14, 2017 to file an appeal before this Court. Considering that the instant *Petition for*

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[58] Section 3(e), Rule 131, Rules of Evidence.
[59] Docket, 24A, p. 4 of the *Judicial Affidavit of Revenue Officer Shirley R. Sabornido* dated November 9, 2018, p. 292.
[60] BIR Records, Exhibit "R-11", p. 119.
[61] Docket, Paragraph 5 of the *Answer*, p. 66; Docket, Page 3 of *Memorandum*, p. 340.

Review was filed only on October 23, 2017, it is filed out of time, and consequently, this Court has no jurisdiction to entertain the same. To reiterate, the 30-day period to appeal is jurisdictional and non-extendible; and when the court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[62]

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

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[62] Section 1, Rule 9, Rules of Court; *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 04, 2015.