REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

V.Y. DOMINGO JEWELLERS, INC., *Petitioner,*	**CTA EB No. 1170** (CTA Case No. 8335)
	Present:
- versus -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 01 2015 4:01 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, V.Y. Domingo Jewellers, Inc., assailing the *Resolutions*[1] dated January 29, 2014 and April 23, 2014 of the First Division of the Court dismissing petitioner's petition for review on the ground of lack of jurisdiction.

The Facts

Petitioner V.Y. Domingo Jewellers, Inc. is a corporation duly organized under existing laws, with office address at 35 Emerald St., Millionaires Village, Novaliches, Quezon City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the government authority duly designated to collect all taxes,

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[1] *Rollo*, pp. 88-98 and p. 59, respectively.

[2] Par. II(1), petitioner's Pre-Trial Brief and par. II(A)(1), Pre-Trial Order, Division *Rollo*, p. 79 and p. 136, respectively.

grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code.[3]

The relevant and antecedent facts[4], leading to the filing of the petition for review with the Court in Division, are as follows:

1. September 9, 2009 – The Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) assessing petitioner for deficiency income tax and value-added tax, inclusive of interest, for taxable year 2006 which was received by petitioner sometime in the second week of September 2009[5].

2. September 17, 2009[6] – Petitioner filed a Request for Re-evaluation / Re-investigation and Reconsideration with the Regional Director of BIR - Revenue Region No. 6 in response to the PAN or more specifically, its request for "a thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the Preliminary Assessment Notice".

3. August 18, 2011 – Petitioner received the Preliminary Collection Letter (PCL) dated August 10, 2011, informing the petitioner of the existence of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010, and indicating, in part, as follows:

   "If you want to know the details and/or settle this assessment, may we invite you to come to this office, within ten (10) days from receipt of this notice. However, if payment had already been made, please send or bring us copies of the receipts of payment together with this letter to be our basis for canceling/closing your liability/ies."

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[3] Par. II(2), Respondent's Pre-Trial Brief and par. II(A)(2), Pre-Trial Order, Division *Rollo*, pp. 95-96 and p. 136, respectively.
[4] *Rollo*, pp. 96-97.
[5] Par. 9, Petition for Review, *Rollo*, p. 11 and par. 4, petition for review, Division *Rollo*, p. 7.
[6] BIR Records, pp. 152-153; the letter was later indorsed to the Billing Section, Assessment Division of Revenue Region No. 6 on September 24, 2009.

4. September 12, 2011 – Petitioner filed a letter requesting the BIR for certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010.

5. September 16, 2011 – Petitioner filed a petition for review with the Court in Division, attaching therewith certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010, praying that the Court issue a decision declaring as null and void, cancelled, withdrawn and with no force and effect Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 and Preliminary Collection Letter dated August 10, 2011, for having been issued beyond the prescriptive period for assessment and collection of internal revenue taxes.

Respondent filed her Answer [7] on October 26, 2011, alleging, among others, by way of special and affirmative defense, that the Court has no jurisdiction to entertain the instant petition considering that the Formal Letter of Demand and Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 all dated September 9, 2010 had become final for failure of petitioner to protest the Final Assessment Notice within thirty (30) days from receipt of the assessment.

Trial ensued. Petitioner presented documentary and testimonial evidence and accordingly filed its Petitioner's Formal Offer of Documentary Exhibits [8] on June 14, 2013. Thereafter, Resolutions [9] dated August 14, 2013 and September 13, 2013 were issued by the Court admitting petitioner's evidence.

On September 23, 2013, respondent filed her Motion to Dismiss [10] seeking the dismissal of the petition for review for want of jurisdiction arguing that it is neither the assessment nor the formal letter of demand that is appealable to the Court of Tax Appeals (CTA) but the decision of the CIR on the disputed assessment. Since the petition for review was anchored on petitioner's receipt of the PCL, which petitioner treated as a denial of its Motion for Reinvestigation of the PAN,

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[7] Division *Rollo*, pp. 45-50.
[8] Division *Rollo*, pp. 333-355.
[9] Division *Rollo*, pp. 409-410 and 423-424, respectively.
[10] Division *Rollo*, pp. 425-432.

then there is no disputed assessment to speak of, thus, the CTA has no jurisdiction to entertain the petition for review.

Petitioner filed its Opposition (Re: Respondent's Motion to Dismiss dated 20 September 2013)[11] on October 11, 2013.

In the assailed Resolution[12] dated January 29, 2014, the Court in Division held that it is without jurisdiction to entertain the appeal. The Court held, among others, that the rule is that for the CTA to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision, or denied by said CIR through inaction, from which a petition for review may be taken to the CTA. Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 have **not** been disputed at the administrative level. Petitioner only administratively contested the PAN. Subsequently, it received the PCL. It was only after such receipt that petitioner had copies of the said assessments. Without disputing the latter before the BIR, petitioner appealed to the Court in Division. Hence, what were appealed to the Court in Division are the subject assessments, not a decision or denial of respondent to the protest thereof. Correspondingly, the said assessments attained finality, and thus, the Court in Division is without jurisdiction to entertain the appeal.

Petitioner filed a Motion for Reconsideration (Re: Resolution dated 29 January 2014)[13] on February 20, 2014, which was denied for lack of merit by the Court in Division in the assailed Resolution[14] dated April 23, 2014.

Aggrieved, petitioner filed the instant *Petition for Review* on May 30, 2014.

Respondent was ordered to file her comment within ten (10) days from receipt of the Resolution[15] dated July 22, 2014. Respondent filed her Comment (Re: Petitioner's Petition for Review dated 30 May 2014)[16] on August 11, 2014.

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[11] Division *Rollo*, pp. 449-485.
[12] *Rollo*, pp. 88-98.
[13] Division *Rollo*, pp. 501-534.
[14] *Rollo*, p. 59.
[15] *Rollo*, pp. 66-67.
[16] *Rollo*, pp. 68-70.

Petitioner filed a Reply [Re: Comment (Petitioner's Petition for Review dated 30 May 2014) dated 08 August 2014][17] on September 18, 2014.

Considering the issues raised in the instant petition for review, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[18].

Memorandum for the Petitioner V.Y. Domingo Jewellers, Inc. was filed on December 9, 2014 while Respondent's Memorandum was filed on December 16, 2014. Thus, the above-captioned case was submitted for decision on January 22, 2015.

The Issue

The main issue presented in this case is whether or not the First Division of the Court erred in holding that it has no jurisdiction to hear the petition for review.

The Ruling of the Court

Petitioner argues that the Supreme Court has expressly and categorically ruled that when the tenor of the collection letter shows that such is the final decision of the CIR, the said collection letter may be the subject of a petition for review with the CTA, even without an administrative protest. The CTA First Division mistakenly agreed with respondent's position that the petitioner should have administratively protested the Assessment Notices first before filing the petition for review. It bears great emphasis that petitioner cannot be expected to file an administrative protest to the Assessment Notices which it never received. Moreover, the tenor of the PCL forecloses any opportunity for the petitioner to file its administrative protest.

Petitioner likewise argues that it was denied due process when respondent failed to send the Notice of Final Assessment to it. Petitioner, therefore, had nothing to protest. It should be emphasized that before a taxpayer is expected to file an administrative protest, a Final Assessment Notice should be sent to it, such is absent in the present case. The PCL

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[17] *Rollo*, pp. 74-81.
[18] *Rollo*, pp. 101-102, Resolution dated October 23, 2014.

assumes that there was an assessment notice sent to petitioner as the same assessment should be the basis of a collection letter. In the present case, no assessment was ever sent to petitioner. It was, therefore, premature for respondent to send petitioner the PCL. The period to protest an assessment notice cannot be said to have run from the time petitioner requested certified true copies of the Assessment Notices. The Supreme Court, in a multitude of cases, has consistently ruled that an assessment notice must be sent and actually received by the taxpayer before the period to protest begins to run.

In her Comment, respondent notes that a close scrutiny of the arguments raised by petitioner readily reveals that the same are mere repetitions and reiterations of those previously raised and discussed in its Petition for Review dated September 16, 2011 and Motion for Reconsideration dated February 20, 2014 which had been duly considered, thoroughly and exhaustively discussed by the CTA First Division in its Resolution promulgated on January 29, 2014 and Resolution promulgated on April 23, 2014.

To recall, in her Motion to Dismiss filed before the First Division, respondent contends that it is the decision of the CIR on disputed assessment that can be appealed to the CTA. The word "decisions" in Section 7(a)(1) of Republic Act (RA) No. 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessment. Petitioner cannot reasonably argue that it should not bear the consequences of its failure to file a protest or Motion for Reinvestigation on Assessment Notice No. 32-06-IT-0242, Assessment Notice No. 32-06-VT-0243, and Formal Letter of Demand dated September 9, 2010, due to its non-receipt of the said Assessment Notices and Formal Letter of Demand. Before petitioner filed its petition for review on September 16, 2011, it was already in receipt of a copy of the assessment notices on September 15, 2011. However, instead of questioning the contents of the said assessment notices by filing a protest or motion for reinvestigation within 30 days from September 15, 2011, it opted to institute the instant petition for review on the basis of the PCL issued by the BIR, which petitioner treated as a denial of its Motion for Reinvestigation of the PAN. Thus, there being no disputed assessment to speak about, the CTA has no jurisdiction to entertain the petition.

After evaluating the arguments of the parties, the Court *En Banc* finds merit in the petition for review.

The Court in Division has jurisdiction to entertain petitioner's Petition for Review in CTA Case No. 8335, which specifically prays for a decision declaring as null and void, cancelled, withdrawn and with no force and effect Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 and the Preliminary Collection Letter dated August 10, 2011, pursuant to Section 7(a)(1)of RA No. 1125[19], as amended by RA No. 9282, *to wit*:

> "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 or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

In the case of *Philippine Journalists, Inc. (PJI) v. CIR*[20], PJI did not receive a copy of the Final Assessment Notices and Letters of Demand. On March 15, 1999, a Preliminary Collection Letter was sent to petitioner and on November 10, 1999, a Final Notice Before Seizure was issued to PJI. On November 29, 1999, petitioner filed a letter to the BIR seeking a clarification on how its tax liability was arrived at. On March 28, 2000, petitioner received a Warrant of Distraint and/or Levy. Thereafter, PJI filed its petition for review with the CTA on April 26, 2000, or within thirty (30) days from its receipt of the Warrant of Distraint and/or Levy on March 28, 2000. The CTA cancelled the subject assessments. However, the Court of Appeals held that the petition for review was neither timely filed nor the proper remedy. Only decisions of the BIR, denying the request for reconsideration or reinvestigation may be appealed to the CTA. Since the petitioner did not file a request for reinvestigation or reconsideration (*i.e.*, administrative protest) within thirty (30) days, the assessment notices became final and unappealable.

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[19] An Act Creating the Court of Tax Appeals.
[20] G.R. No. 162852, December 16, 2004.

However, the Supreme Court agreed with the argument of PJI that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was based on an invalid waiver of the statutes of limitations. The Supreme Court explained:

> **"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue.** The wording of the provision is clear and simple. It gives the **CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
>
> This is not the first case where **the CTA validly ruled on issues that did not relate directly to a disputed assessment** or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a **petition to invalidate and annul the distraint orders** of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (*Emphasis supplied; citations omitted*)

Based on the records, the Court *En Banc* observes the following:

1. Petitioner has consistently denied receipt of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243[21];

2. Instead, petitioner acknowledges receipt of the PCL dated August 10, 2011 on August 18, 2011.[22] The PCL was issued by Revenue District Office No. 28 Novaliches, which states that:

   "Our records show that you have an Assessment Notice No. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010, issued at Revenue Region 6,

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[21] Par. 36, Petition for Review, *Rollo*, p. 19; Par. 20, Memorandum for the Petitioner V.Y. Domingo Jewellers, Inc., *Rollo*, p. 127; Par. 16.2, *Ex Abundante Ad Cautelam* Reply with Motion to Strike and Motion to Declare Respondent in Default, Division *Rollo*, p. 63; Par. 23, Opposition (Re: Respondent's Motion to Dismiss dated 20 September 2013), Division *Rollo*, p. 460.

[22] Par. 9, Petition for Review, Division *Rollo*, p. 9; Exhibit "D", Division *Rollo*, p. 33.

Manila. The docket was referred to us for collection of your Internal Revenue tax liability/ies described hereunder, which remains unpaid to date: xxx

If you want to know the details and/or settle this assessment, may we invite you to come to this office, within ten (10) days from receipt of this notice. However, if payment had already been made, please send or bring us copies of the receipts of payment together with this letter to be our basis for canceling/closing your liability/ies.

We will highly appreciate if you can give this matter your preferential attention, otherwise, we shall be constrained to enforce the collection thereof thru Administrative Summary Remedies provided for by the law, without further notice."

3. Thus, prompting petitioner to request on September 12, 2011 for certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 referred to in the PCL.[23]

4. As requested, the BIR furnished petitioner with the certified true copies of the subject Assessment Notices but not the Formal Letter of Demand.[24]

5. Petitioner did not file an administrative protest against Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243.

6. Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 bear three dates: (a) "DATE ISSUED SEP 09 2010"; (b) stamped "Revenue Region No. 6 Manila RECEIVED NOV 08, 2010 Administrative Division"; and (c) stamped "BUREAU OF INTERNAL REVENUE REVENUE REGION 6 MLA RECEIVED NOV 26, 2010 OFFICE OF THE COLL. DIVISION". [25]

7. Respondent alleges that the Formal Letter of Demand and Assessment Notice Nos. 32-06-IT-0242 and 32-

[23] Annex "R-1", respondent's Motion to Dismiss, Division *Rollo*, p. 433 and BIR Records, p. 192.
[24] Annexes "B" and "B-1" of the petition for review or Exhibit Nos. "B" and "C", Division *Rollo*, pp. 31 and 32, respectively; Annexes "R-1" to "R-2", respondent's Motion to Dismiss, Division *Rollo*, pp. 433-434; and par. 9, respondent's Motion to Dismiss, Division *Rollo*, p. 430.
[25] Exhibit Nos. "B" and "C", Division *Rollo*, pp. 31 and 32, respectively and BIR Records, pp. 170-171.

06-VT-0243 all dated September 9, 2010 were issued to petitioner[26], but never alleged that the same were served or sent to petitioner. What is clear is that respondent acknowledges that petitioner requested for certified true copies of the subject Assessment Notices and were furnished the same on September 15, 2011. In her Motion to Dismiss, respondent stated that "Petitioner cannot reasonably argue that it should not bear the consequences for its failure to file a protest or Motion for Reinvestigation the Assessment Notice No. 32-06-IT-0242, Assessment Notice No. 32-06-VT-0243, and Formal Letter of Demand dated September 09, 2010, due to its non-receipt of the said Assessment Notices and Formal Letter of Demand. Records show that on September 12, 2011, petitioner, through counsel, requested certified true copies of Assessment Notice No. 32-06-IT-0242 and Assessment Notice No. 32-06-VT-0243 from the Collection Section of Revenue District No. 28, BIR, Quezon City. Thus, on September 15, 2011, the Collection Section of Revenue District Office No. 28, BIR, Quezon City, granted petitioner's request and gave petitioner certified true copies of Assessment Notice No. 32-06-IT-0242 and Assessment Notice No. 32-06-VT-0243."[27]

8. The Formal Letter of Demand[28] dated September 9, 2010 kept in the BIR records does not bear a signature acknowledging receipt of the same or a registry receipt.

9. The subject Assessment Notices do not state the facts, the law, rules and regulations or jurisprudence on which the assessment is based.

10. Petitioner filed its petition for review before the Court in Division on September 16, 2011 or within thirty (30) days from its receipt of the PCL on August 18, 2011.

11. Petitioner executed a Waiver of the Statute of Limitations Under the National Internal Revenue Code on November 12, 2009, giving respondent until

[26] Par. 21, respondent's Answer, Division *Rollo*, p. 48.
[27] Par. 9, respondent's Motion to Dismiss, Division *Rollo*, p 430.
[28] BIR Records, pp. 167-169.

September 17, 2010, within which to assess taxes for taxable year 2006.[29] A cursory examination of the Waiver shows that the date of its acceptance by the Revenue District Officer was not indicated on the face of the Waiver.

12. Petitioner filed its Annual ITR for taxable year ending December 31, 2006 on April 17, 2007.[30] Applying Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, the BIR had until April 17, 2010 within which to issue a Final Assessment Notice (FAN) assessing petitioner for deficiency income tax for taxable year 2006.

13. Granting that the Waiver is valid, then respondent has until September 17, 2010 within which to make its assessment. However, it is not clear from the records if and when the FAN was released, mailed and sent to petitioner. Moreover, as stated earlier, the Assessment Notices show three dates: September 9, 2010, November 8, 2010 and November 26, 2010.

14. Petitioner did not present in evidence its Quarterly VAT Returns for taxable year 2006. Hence, the Court cannot compute with certainty the last day prescribed by law within which respondent should assess petitioner for deficiency VAT for taxable year 2006.

From the foregoing, it can be established that petitioner did not receive the subject Assessment Notices and the Formal Letter of Demand. Thereafter, it received a PCL demanding payment of deficiency income tax and VAT. Petitioner then requested for copies of the Assessment Notices mentioned in the PCL but did not file an administrative protest. Instead, it filed a petition for review with the Court in Division.

Considering that petitioner denies receipt of the FAN and it appears that respondent may have impliedly admitted this fact in her Motion to Dismiss, it is incumbent upon respondent to prove that the FAN was indeed received by petitioner. If respondent fails to do so, there will be a violation of due process provided under Section 228 of the NIRC of

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[29] Exhibit "G", Division *Rollo*, p. 37.
[30] Exhibit No. "K", Division *Rollo*, p. 376.

1997, as amended, and Section 3 of Revenue Regulations No. 12-99 quoted hereunder:

> 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 preassessment notice shall not be required in the following cases: xxx
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> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> 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 supplied)*
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> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** -
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* - **The formal letter of demand and assessment notice shall be issued by the Commissioner** or his duly authorized representative. **The letter of demand calling for**

> **payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based,** ***otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
>
> 3.1.5 *Disputed Assessment.* — **The taxpayer** or his duly authorized representative **may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt** thereof. xxx (*Emphasis supplied)*

Petitioner's case did not fall within the usual procedure in the issuance of an assessment as respondent failed to serve or send the FAN to petitioner. Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations No. 12-99 are silent as to the procedure to be followed in case the taxpayer did not receive the FAN but instead receives a preliminary collection letter or a warrant of distraint/levy or similar communications, informing the taxpayer of the existence of a FAN for the first time. Understandably, this would cause some confusion as to what the next step is. Hence, petitioner cannot be faulted for not filing an administrative protest before filing a petition for review before the Court in Division since it did not receive the FAN and the language of the PCL shows that the respondent is already demanding payment from petitioner presupposing that the assessment has become final.

If the usual procedure will be followed, the 30-day period within which to file an administrative protest cannot even commence since petitioner did not receive the FAN. Consequently, the running of the 30-day period to appeal to the CTA from the decision or inaction of the CIR cannot likewise commence considering that the protest is not yet due for filing, thus, no disputed assessment to decide on. Even if the counting of the 30-day period within which to file an administrative protest would begin to run on the day petitioner received copies of the subject Assessment Notices, as suggested by respondent, the subject Assessment Notices do not contain the details on how the deficiency assessment was arrived at. As noted earlier, only certified true copies of the Assessment Notices were furnished to petitioner and not the Formal Letter of Demand. Thus, petitioner could not reasonably be expected to intelligently file a protest thereto, explaining in detail its opposition, since the bases of the assessments were not provided.

Hence, petitioner's petition for review does not involve an appeal from a decision of the CIR on a disputed assessment since there is no "disputed" assessment to speak of as petitioner did not file an administrative protest against the Assessment Notices, justified by its non-receipt of the same. Therefore, petitioner's case falls within the second part of Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, which covers other matters that arise out of the NIRC or related laws administered by the BIR. It gives the CTA the jurisdiction to determine if the PCL and Assessment Notices, upon which the issuance of the PCL was based, were illegally issued considering that the Assessment Notices were not received by petitioner.

However, the Court stresses that any findings presented herein are not final. The Court cannot determine with finality if the subject Assessment Notices and PCL are void since respondent has not yet presented her evidence to rebut the evidence presented by petitioner.

In light of the foregoing, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The *Resolutions* dated January 29, 2014 and April 23, 2014 of the First Division of the Court are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the First Division of the Court for further proceedings to afford respondent full opportunity to present her evidence.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(Joins Presiding Justice del Rosario in his Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(Joins Presiding Justice del Rosario in his Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* 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

V.Y. DOMINGO JEWELLERS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1170
(CTA Case No. 8335)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
JUL 01 2015
4:00 p.m.

x -- x

DISSENTING OPINION

DEL ROSARIO, PJ.:

In her *ponencia,* my esteemed and learned colleague, the Honorable Associate Justice Amelia R. Cotangco-Manalastas, granted the instant Petition for Review filed by V.Y. Domingo Jewellers, Inc. (VYDJI) and remanded the case to the First Division.

With all due respect, after a careful examination of the pertinent facts of the case, in relation to applicable laws and jurisprudence, I am, however, of the opinion that the Court of Tax Appeals has no jurisdiction over the Petition for Review filed by VYDJI in CTA Case No. 8335.

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Section 3 of Revenue Regulations No. 12-99[1], the procedure for issuance of an assessment and protesting the same is as follows:

> First – The Commissioner of Internal Revenue (CIR) or his duly authorized representative makes an initial determination that "there exists sufficient basis to assess the taxpayer";
>
> Second – The Bureau of Internal Revenue (BIR) issues a PAN, giving the taxpayer fifteen (15) days within which to respond;
>
> Third – If no response is made, the taxpayer is "considered in default" in which case, a formal letter of demand (FLD) and assessment notice is caused to be issued against the taxpayer;
>
> Fourth – The taxpayer may administratively protest the FAN/FLD within thirty (30) days from receipt thereof, stating the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based;
>
> Fifth – The taxpayer shall submit the supporting documents within sixty (60) days from filing of its protest;
>
> Sixth – The Commissioner or her duly authorized representative has one hundred eighty (180) days to act on the protest;
>
> Seventh – If the protest is denied or the 180-day period has lapsed, the taxpayer has thirty (30) days from receipt of the decision or from the lapse of the 180-day period to appeal the denial or inaction to the Court of Tax Appeals.

In this case, records show that petitioner received a copy of the PAN on September 9, 2009. Petitioner filed its protest thereto on September 24, 2009. On August 18, 2011, petitioner received the Preliminary Collection Letter informing petitioner of the existence of Assessment Notice Nos. 32-

[1] dated September 6, 1999.

OM

06-IT-0242 and 32-06-VT-0243 dated November 18, 2010. On September 12, 2011, petitioner requested for certified true copies of said Assessment Notice. On September 15, 2011, respondent furnished petitioner certified true copies of FLD and Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 all dated September 9, 2010. **Petitioner, therefore, had thirty (30) days from receipt of the certified true copies of FLD and Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 all dated September 9, 2010 within which to file an administrative protest. But instead of doing so, it opted to file a Petition for Review before the Court in Division on September 16, 2011.**

Clearly, petitioner did not exhaust the administrative remedy provided under Section 228 of the NIRC of 1997, as amended and RR No. 12-99 which is fatal to its cause. Consequently, the non-filing of the protest against the FLD led to the finality of the assessment.

Settled is the rule that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[2]

For all the foregoing, I VOTE to DENY the Petition for Review filed by petitioner V.Y. Domingo Jewellers, Inc.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] *Asia International Auctioneers, Inc. and Subic Bay Motors Corporation v. Hon. Guillermo L. Parayno, Jr., et al.,* G.R. No. 163445, December 18, 2007.