REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JTKC LAND, INC.,
Petitioner,

CTA Case No. 9597

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 13 2020
4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review filed by petitioner JTKC Land, Inc. against respondent Commissioner of Internal Revenue (CIR) on May 24, 2017 praying that the issuances made by respondent assessing petitioner of alleged deficiency income tax, value-added tax (VAT), withholding tax on sale of property, documentary stamp tax (DST) in the total amount of ₱95,480,170.26, inclusive of increments, be annulled and declared void.[1]

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[1] I. Statement of the Case, Pre-Trial Order dated December 5, 2018, Docket, Vol. II, p. 838.

THE PARTIES

Petitioner JTKC Land, Inc. is alleged to be a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at G/F Amorsolo Mansion, 130 Amorsolo St., San Lorenzo Village, Makati City.[2]

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On October 21, 2011, petitioner received a *Letter of Authority* (LOA) No. 046-2011-00000460 dated October 12, 2011 issued by the OIC-Regional Director of Revenue Region No. 7 for the period from January 1, 2010 to December 31, 2010.[3] The said LOA provides that the bearers thereof, Revenue Officer Jezzebelle Bercasio (RO Bercasio) and Group Supervisor Marinelia German, are authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010 pursuant to RMO No. 62-2010, Claims for Income Withholding Tax Excess Payments.[4]

On December 2, 2011, petitioner received an *Audit Notice* together with a list of the books of accounts and other accounting records to be examined.[5]

Petitioner provided the BIR with a copy of the BIR Ruling No. (DA-JV-023) 178-08.[6] The then Revenue District Officer of RDO No. 46, Atty. Armando F. Tria, in a *Letter* dated January 31, 2013, referred to the BIR Ruling No. (DA-JV-023) 178-08 dated August 28, 2008, which was

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[2] Par. 11, Petition for Review, Docket, Vol. I, p. 12.
[3] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 446.
[4] Par. 3, JSFI, Docket, Vol. I, pp. 446-447.
[5] Par. 4, JSFI, Docket, Vol. I, p. 447.
[6] Par. 5, JSFI, Docket, Vol. I, p. 447.

submitted by petitioner to the BIR in reply to its initial findings noted in the investigation.[7]

On July 18, 2012, petitioner received a *Subpoena Duces Tecum* issued on July 12, 2012 by the OIC-Chief, Legal Division of Revenue Region No. 7, ordering the petitioner to appear on August 9, 2012 before the Chief of the Legal Division and to bring and submit its books of accounts and other accounting records for the year 2010.[8]

On August 14, 2012, petitioner sent a letter to the OIC-Chief, Legal Division of Revenue Region No. 7, whereby petitioner undertook to submit the documents on or before August 30, 2012.[9] In a letter dated September 12, 2012, petitioner requested for an extension of thirty (30) days within which to submit the documents.[10]

On October 19, 2012, petitioner received a letter dated September 28, 2012 from the Revenue District Officer of RDO No. 46 requesting the petitioner to prepare the records and documents enumerated therein for inspection on October 15, 2012.[11]

On October 19, 2012, petitioner presented to RO Bercasio copies of the Project Investment Agreements (PIAs) covering the following units:

a. UP 61 & 62 A;
b. UP 61 & 62 B;
c. UP 63 & 64 A;
d. 60B;
e. 58A;
f. 58B;
g. 57A; and
h. 57B.[12]

RO Bercasio acknowledged receipt as shown by the list signed by her on even date.[13]

[7] *Id.*
[8] Par. 6, JSFI, Docket, Vol. I, p. 447.
[9] Par. 7, JSFI, Docket, Vol. I, p. 447.
[10] Par. 8, JSFI, Docket, Vol. I, p. 447.
[11] Par. 9, JSFI, Docket, Vol. I, p. 447.
[12] Par. 10, JSFI, Docket, Vol. I, pp. 447-448.
[13] Par. 11, JSFI, Docket, Vol. I, p. 448.

On October 23, 2012, petitioner received a letter dated October 16, 2012 from the Revenue District Officer of RDO No. 46, reiterating its request to present the records and documents on or before October 22, 2012.[14] The Revenue District Officer also asked for the originals of the Contracts to Sell or the PIAs.[15]

In a letter dated January 17, 2013, petitioner informed RDO No. 46, through its Revenue District Officer, that its books of account and other accounting records for the year 2010 are available for inspection on February 11, 2013 to February 13, 2013 at petitioner's office in Makati City.[16]

In a letter dated January 21, 2013, the Revenue District Officer of RDO No. 46 informed petitioner that the assigned examiners will visit petitioner's office on January 29, 2013 to start the audit investigation.[17]

On February 11, 2013, the Revenue Officers appeared at petitioner's office in Makati City.[18] Petitioner provided workspace for the Revenue Officers to examine its records and books of account and showed all the records requested.[19]

In three separate letters all dated February 12, 2013, petitioner provided a list of the documents that were prepared for the audit investigation, which documents were available when the Revenue Officers visited petitioner's office on February 11, 2013.[20] A copy of the *BIR Ruling* was provided by the petitioner to the BIR.[21]

On November 6, 2013, petitioner received a letter of even date from the Revenue District Officer of RDO No. 46, Mr. Joseph M. Catapia, inviting petitioner for an informal conference on November 14, 2013.[22] Attached to the said letter are Annexes A, B, C, D, and E, which supposedly show the details of the deficiency tax assessment.[23]

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[14] Par. 12, JSFI, Docket, Vol. I, p. 448.
[15] *Id.*
[16] Par. 13, JSFI, Docket, Vol. I, p. 448.
[17] Par. 14, JSFI, Docket, Vol. I, p. 448.
[18] Par. 15, JSFI, Docket, Vol. I, p. 448.
[19] *Id.*
[20] Par. 16, JSFI, Docket, Vol. I, p. 448.
[21] *Id.*
[22] Par. 17, JSFI, Docket, Vol. I, p. 448.
[23] *Id.*

In a letter dated November 14, 2013, petitioner requested that the informal conference be rescheduled on November 21, 2013.[24]

On December 10, 2013, petitioner received a *Preliminary Assessment Notice* dated December 9, 2013, together with the *Details of Discrepancies*.[25]

On January 10, 2014, petitioner received the following:

1. *Assessment Notice* dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency income tax in the total amount of ₱18,100,879.44;

2. *Assessment Notice* dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency VAT in the total amount of ₱39,928,285.99;

3. *Assessment Notice* dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency withholding tax (on sale of property) in the total amount of ₱33,733,764.56;

4. *Assessment Notice* dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency DST in the total amount of ₱3,629,740.27;

5. *Assessment Notice* dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of compromise penalty in the amount of ₱155,000.00;

6. *Formal Letter of Demand* dated January 10, 2014 for the alleged deficiency income tax, VAT, withholding tax on sale of property, and DST;

7. *Details of Discrepancies* (Schedule "I" of the Formal Letter of Demand) for the alleged deficiency income tax, VAT, withholding tax on sale of property, and DST; and

8. *Formal Letter of Demand* dated January 10, 2014 for the compromise penalty.[26]

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[24] Par. 18, JSFI, Docket, Vol. I, p. 449.
[25] Par. 19, JSFI, Docket, Vol. I, p. 449.
[26] Par. 20, JSFI, Docket, Vol. I, p. 450.

In a letter dated January 14, 2014, petitioner requested for a reinvestigation of the results/findings for the alleged deficiency taxes for the year 2010.[27] Petitioner filed its request for reinvestigation on January 15, 2014.[28]

Respondent, through the Regional Director of Revenue Region No. 7, Mr. Alfredo V. Misajon, and the Chief of the Collection Division, Ms. Alice S. A. Gonzales issued a *Preliminary Collection Letter* dated June 17, 2014, which provides that several notices were sent to petitioner's office for the collection of its internal revenue tax liability/ies described thereunder.[29] The supposed deficiency taxes are as follows:[30]

Kind of Tax	Basic Amount Due	Surcharge	Interest	Compromise Penalty	Total
IT	11,566,563.37		6,534,316.07		18,100,879.44
VT	24,819,183.22		15,109,102.77		39,928,285.99
WT	17,733,248.00	4,433,312.00	11,567,204.56		33,733,764.56
DST	1,941,322.00	485,330.50	1,203,087.77		3,629,740.27
CP				155,000.00	155,000.00
TOTAL	56,060,316.59	4,918,642.50	34,413,711.17	155,000.00	**95,547,670.26**

Petitioner received the *Preliminary Collection Letter* on July 2, 2014.[31]

On July 10, 2014, petitioner filed a letter dated July 8, 2014 before the Regional Director of BIR Revenue Region No. 7 manifesting its protest against the issuance of the *Preliminary Collection Letter* on the ground of lack of due process.[32]

On April 8, 2016, petitioner, through counsel, wrote a letter to the Arrears Management Division of Revenue Region No. 7 requesting that the Warrant of Garnishment served on Banco De Oro – Calbayog Mandaluyong Branch and/or on such other banks that may have

[27] Par. 21, JSFI, Docket, Vol. I, p. 450; Exhibit "P-34", Docket, Vol. II, p. 984.
[28] Exhibit "P-34", Docket, Vol. II, p. 984.
[29] Par. 22, JSFI, Docket, Vol. I, p. 450.
[30] *Id.*
[31] Exhibit "P-35", Docket, Vol. II, p. 985.
[32] Exhibit "P-36", Docket, Vol. II, pp. 987-988.

received the same be lifted, as having been issued prematurely and/or without basis.[33]

In a letter dated April 26, 2016, petitioner, through counsel, requested the Collection Division of Revenue Region No. 7 or any other appropriate division or department thereof to respond to petitioner's letter dated July 8, 2014, as no response thereto has yet been received by the petitioner.[34]

On May 5, 2016, petitioner, through counsel, sent a letter of even date to the Regional Director of Revenue Region No. 7 informing him that petitioner has yet to receive a response to its letter dated July 8, 2014, and requesting that the matter be referred back to RDO No. 46 for reinvestigation.[35]

In a *Memorandum* dated July 18, 2016 signed by Ramon Bautista for the Chief of the Collection Division, it is stated:

> "Since the WDL is un-served and no Final Notice Before Seizure was issued and served to the taxpayer, the undersigned respectfully recommend that the docket be referred back to Unit 1 for issuance of FNBS and to complete the procedure as prescribed in the collection manual."[36]

On May 10, 2017, the respondent, through the Chief of the Collection Division and the Head of the Arrears Management Section of Revenue Region No. 7, served a copy of a *Demand Letter* dated May 2, 2017 addressed to the Chairman/President of the petitioner, Mr. Ruben C. Tiu, to his residence.[37] On the same date, the other directors of the petitioner were likewise served with copies of the same Demand Letter to their residences as well.[38] The Demand Letter provides:

Assessment/Demand No.	:	046-B033-10
Kind of Tax	:	IT, VT WT, DS and MC
Period Covered	:	2010
Amount	:	₱95,408,170.26

[33] Par. 23, JSFI, Docket, Vol. I, p. 450.
[34] Par. 24, JSFI, Docket, Vol. I, p. 450.
[35] Par. 25, JSFI, Docket, Vol. I, pp. 450-451.
[36] Par. 26, JSFI, Docket, Vol. I, p. 451.
[37] Par. 27, JSFI, Docket, Vol. I, p. 451.
[38] Par. 28, JSFI, Docket, Vol. I, p. 451.

> ***Sir/Madam:***
>
> Please be informed that we have sent you Notices requesting the settlement of the above account. However, despite the considerable length of time given to you, we have not been favored with any reply.
>
> In this connection, we are again giving you the last opportunity to make the necessary settlement of the above-stated tax liability/ies within five (5) days from receipt of this Collection Notice. xxx
>
> Should this Office fail to hear from you within the prescribed period. We will be constrained to enforce collection thereof through summary and/or judicial remedies and filing the necessary action in the Court of Law in order to protect the interest of the Government.
>
> xxx"[39]

On May 24, 2017, petitioner filed the present Petition for Review. The case was initially raffled to this Court's First Division.

Within the extended time granted by the Court,[40] respondent filed his Answer[41] on August 16, 2017.

Pre-trial conference for the case was held on November 23, 2017.[42] Petitioner filed its Pre-Trial Brief[43] on November 20, 2017 while respondent filed his Pre-Trial Brief[44] on November 22, 2017.

Within the extended period granted by the Court,[45] the parties filed their Joint Motion to Admit (Attached Joint Stipulation of Facts and Issues dated 02 March 2018) with the attached Joint Stipulation of Facts and Issues[46] on March 2, 2018, which this Court approved and adopted in the Pre-Trial Order[47] dated December 5, 2018.

[39] Par. 29, JSFI, Docket, Vol. I, pp. 451-452.
[40] Resolution dated August 1, 2017, Docket, Vol. I, p. 133.
[41] Docket, Vol. I, pp. 134-137.
[42] Minutes of the Hearing dated November 23, 2017, Docket, Vol. I, pp. 176-178.
[43] Docket, Vol. I, pp. 145-158.
[44] *Id.*, pp. 160-175.
[45] Order dated March 8, 2018, Docket, Vol. I, pp. 486-487.
[46] Docket, Vol. I, pp. 443-461.
[47] Docket, Vol. II, pp. 838-845.

During trial, petitioner presented the following as its witnesses: (1) Ms. Irene J. Buban, petitioner's former Accountant;[48] (2) Ms. Rexie Delos Santos, petitioner's Accountant;[49] and (3) Mr. Romualdo Macasaet, petitioner's Managing Director.[50]

In an Order dated September 25, 2018,[51] the present case was transferred to this Court's Second Division.

On December 6, 2018, petitioner filed its Formal Offer of Evidence (FOE).[52]

Meanwhile, on February 18, 2019, respondent filed a Motion to Dismiss the present Petition for Review on the ground that the deficiency tax assessments already became final, executory and demandable and as such, this Court has no jurisdiction to act upon the Petition for Review.[53]

In a Resolution dated February 22, 2019,[54] this Court directed petitioner to file a Comment on respondent's Motion to Dismiss within ten (10) days from receipt thereof while the resolution on petitioner's Formal Offer of Evidence was held in abeyance.

On March 14, 2019, petitioner file a Motion to Admit (Attached Comment on Respondent's Motion to Dismiss) with the attached Comment (On Respondent's Motion to Dismiss).[55] In a Resolution dated March 21, 2019,[56] this Court granted petitioner's Motion to Admit and admitted petitioner's Comment.

In a Resolution dated May 10, 2019,[57] this Court resolved petitioner's Motion to Admit and Formal Offer of Evidence. The Court admitted Exhibits "P-42", "P-2", "P-3", "P-4", "P-5", "P-15", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-14", "P-16", "P-20", "P-21", "P-22", "P-18", "P-23", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31",

[48] Order dated September 6, 2018, Docket, Vol. II, pp. 809-810; Exhibits "P-45" and "P-45-a", Docket, Vol. II, pp. 652-676.
[49] Order dated September 6, 2018, Docket, Vol. II, pp. 809-810; Exhibits "P-46" and "P-46-a", Docket, Vol. II, pp. 619-628.
[50] Order dated September 6, 2018, Docket, Vol. II, pp. 809-810; Exhibits "P-47" and "P-47-a", Docket, Vol. II, pp. 570-584.
[51] *Id.*, p. 817.
[52] Docket, Vol. II, pp. 846-875.
[53] Docket, Vol. III, pp. 1071-1078.
[54] *Id.*, pp. 1084-1085.
[55] *Id.*, pp. 1094-1108.
[56] *Id.*, p. 1109.
[57] *Id.*, pp. 1112-1116.

"P-32", "P33", "P-34", "P-35", "P-36", "P-36-a", "P37", "P-38", "P-40", "P-41", "P-39", "P45", "P-45-a", "P-46", "P-46-a", "P-47", "P-47-a", and "P-1", subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. On the other hand, this Court denied admission of Exhibits "P-12" and "P-13", for failure to present originals for comparison; and Exhibits "P-43" and "P-44", for failure to identify. In the same Resolution, this Court denied respondent's Motion to Dismiss in order to give parties ample opportunity to prove their respective claims and defenses through a full-blown trial.

On May 31, 2019, petitioner filed a Motion for Reconsideration of the Resolution dated May 10, 2019 denying some of its documentary evidence.[58]

In a Resolution dated July 30, 2019, this Court partially granted petitioner's Motion for Reconsideration. This Court admitted Exhibit "P-44" but still denied Exhibits "P-12", and "P-13" for failure to present the originals for comparison, and "P-43" for failure to identify.

Respondent, on the other hand, presented as his sole witness, Ms. Jezzebelle S. Bercasio, Revenue Officer II of the BIR Revenue District Office No. 28-Novaliches.[59]

Respondent filed his Formal Offer of Evidence on October 22, 2019.[60] In a Resolution[61] dated January 24, 2020, the Court admitted Exhibits "R-1", "R-2", "R-4", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22", and "R-22-a", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. In the same Resolution, this Court granted the parties a period of thirty (30) days from receipt thereof within which to file their memoranda.

On March 6, 2020, petitioner filed its Motion to Admit (Attached Memorandum dated 05 March 2020) with the attached Memorandum.[62] Respondent, on the other hand, failed to file his Memorandum as per

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[58] *Id.*, pp. 1118-1124.
[59] Minutes of the Hearing dated September 2, 2019, Docket, Vol. III, p. 1171; Minutes of the Hearing dated September 4, 2019, Docket, Vol. III, p. 1173; Exhibit "R-22", Docket, Vol. III, pp. 1128-1134.
[60] Docket, Vol. III, pp. 1192-1196.
[61] *Id.*, pp. 1186-1187.
[62] *Id.*, pp. 1196-1264.

Records Verification Report dated March 9, 2020[63] issued by this Court's Judicial Records Division.

In a Resolution[64] dated June 2, 2020, this Court granted petitioner's Motion to Admit (Attached Memorandum dated 05 March 2020 and admitted petitioner's Memorandum. In the same resolution, this Court submitted the present case for decision.

THE ISSUES

The parties have stipulated that the issues to be resolved in the present case are as follows:[65]

a. Whether petitioner is entitled to rely on BIR Ruling No. (DA-JV-023) 178-08 issued in its favor by the respondent;

b. If petitioner is not entitled to rely on the BIR Ruling No. (DA-JV-023) 178-08, whether petitioner is liable for deficiency income tax, value-added tax, withholding tax, documentary stamp tax, and compromise penalty, all for the year 2010;

c. Whether the lack of factual and/or legal basis in the assessment for alleged deficiency taxes violates petitioner's substantive right to due process;

d. Whether the collection proceedings initiated by the respondent through the issuance of a warrant of garnishment prior to the issuance of a final decision on a disputed assessment violates petitioner's right to due process;

e. Whether the assessments for alleged deficiency income tax, value-added tax, withholding tax, documentary stamp tax, and compromise penalty, including surcharge, interest, and/or penalties, are void for lack of factual and/or legal basis; and

f. Whether the subject deficiency taxes and compromise penalty for the year 2010 were already final, executory, and demandable.

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[63] *Id.*, p. 1265.
[64] *Id.*, p. 1266.
[65] Stipulated Issues, JSFI, Docket, Vol. I, pp. 452-453.

THE COURT'S RULING

The Court of Tax Appeals lacks jurisdiction to entertain the present case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[66] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[67] 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.[68] 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.[69]

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **<u>Decisions</u> of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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;"

In the exercise of its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the 1997 NIRC which prescribes the rules to be observed for the issuance of a deficiency tax

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[66] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.
[67] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).
[68] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.
[69] *Id.*

assessment and of protesting the same. The said provision, in part, reads 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 preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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 <u>in such form and manner as may be prescribed by implementing rules and regulations</u>.** 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)*

Corollarily, Section 3 of RR No. 12-99, as amended,[70] implements Section 228 of the 1997 NIRC as it lays down a more detailed procedure relative to the issuance and protest of deficiency tax assessments.

Sections 3.1.3 and 3.1.4 of RR No. 12-99, as amended, in part, provides as follows:

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void* (see illustration in ANNEX "B" hereof).
>
> 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.**
>
> 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.***
>
> If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax

[70] As amended by Revenue Regulations No. 18-2013.

or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

xxx xxx xxx

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. *(Emphasis and underscoring supplied)*

In the filing of protests, the foregoing rules explicitly require that the protest shall state the facts, the applicable law, rules and regulations, or jurisprudence on which it is based. Failing in the regard, the taxpayer's protest shall be considered void and without force and effect.

In the present case, petitioner's protest[71] simply reads:

"Dear Sir,

This is to request from your good office for a re-investigation of the results/findings of all internal revenue taxes for the period

[71] Exhibit "P-34", Docket, Vol. II, p. 984.

January 1 to December 31, 2010 of JTKC Land, Inc. with Letter of Authority No. 046-2011-00000460 dated October 12, 2011.

We have some documents to submit to address the issues regarding the deficiency tax assessment.

Hoping for your favourable response on this matter.

Very truly yours,

Ms. Roxanne B. Platon
Group Accounting Manager"

Viewed in the light of the foregoing rules, it is clear that petitioner's protest shall be considered void and without any legal effect because it utterly failed to state the facts, the applicable law, rules and regulations, or jurisprudence on which it is based. In its purported protest, petitioner merely perfunctorily requested a reinvestigation of the deficiency tax assessment issued by respondent without stating any factual or legal basis therefor. Moreover, while petitioner also manifested in its purported protest that it has some documents to submit to address the issues regarding the assessment, it still failed to specify whether such documents to be presented are newly discovered evidence or additional evidence, as explicitly required by the rules. Given that there is no valid protest against the assessment, the assessment effectively became final and can no longer be contested. It did not become a "disputed assessment" within the contemplation of this Court's exclusive appellate jurisdiction under the law.

Even assuming that petitioner's protest is valid, this Court is still bereft of jurisdiction over the present case because the Petition for Review was filed out of time.

It may be recalled that in its Petition for Review, petitioner treated the Demand Letter dated May 2, 2017[72] as respondent's final decision on its request for reinvestigation and thus, appealable to this Court. The records, however, show that after petitioner filed its purported protest on January 15, 2014, petitioner subsequently received on July 2, 2014 a Preliminary Collection Letter (PCL) dated June 17, 2014[73] wherein it was stated that petitioner should settle its tax liability, inclusive of

[72] Exhibit "P-39", Docket, Vol. II, p. 1007.
[73] Exhibit "P-35", Docket, Vol. II. p. 985.

increments, in the amount of ₱95,547,670.26 within ten (10) days from receipt thereof. The said letter also pertinently reads:

> "In order to avoid the accumulation of interest and surcharge, **it is requested that you pay the aforesaid tax liability/ies within ten (10) days from receipt hereof, at the:**
>
> **RR-007-QUEZON CITY**
> **COLLECTION DIVISION**
> **Quezon Avenue Cor. Sct. Santiago, Quezon Avenue, Quezon City**
>
> However, if payment has/have already been made, please send or bring to us your copies of the receipts of payment together with this letter to be the bases for cancelling/closing your liability/ies. **Otherwise, we shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice.**" *(Emphasis supplied)*

It is an established rule that a demand letter for payment of delinquent taxes may be considered a final decision on a disputed or protested assessment appealable to this Court.[74] The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.[75]

In the present case, the PCL that petitioner received on July 2, 2014 essentially constitutes a final decision on the disputed assessment and thus may be proper subject of an appeal to this Court. The tenor and language of the said letter strongly suggests a character of finality. The fact that the letter reiterated petitioner's tax deficiency assessment and requested for the payment thereof with the warning that should petitioner fail to pay, respondent would be constrained to resort to administrative summary remedies to enforce collection of petitioner's deficiency taxes *without further notice* certainly indicates that it was the CIR's *final action* regarding petitioner's request for reinvestigation. As the Supreme Court had fittingly stated in one case[76] with similar issue, "How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?"

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[74] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005, 477 SCRA 205, 211; *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001, 361 SCRA 71, 77; *Commissioner of Internal Revenue v. Ayala Securities Corporation*, G.R. No. L-29485, March 31, 1976, 70 SCRA 204, 209; *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals*, G.R. No. L-25289, June 28, 1974, 57 SCRA 523, 525.

[75] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005, 477 SCRA 205, 211.

[76] *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001, 361 SCRA 71.

Counting thirty (30) days from petitioner's receipt of the PCL on July 2, 2014, petitioner had until August 1, 2014 within which to either file an appeal before this Court or to file a request for reconsideration before the Commissioner himself. While it appears that petitioner filed a protest-letter against the PCL on July 10, 2014,[77] the same was improperly made because it was filed before the Regional Director and not before the Commissioner of Internal Revenue, as required by the rules.

Clearly, the filing of the present Petition for Review before this Court on May 24, 2017 was already time-barred. By then, the deficiency tax assessment against petitioner already became final, executory and demandable. Consequently, this Court is precluded from acquiring jurisdiction over the present case.

Given that this Court has no jurisdiction to take cognizance of the present case, it has no other option but to dismiss the same.[78]

WHEREFORE, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[77] Exhibit "P-36", Docket, Vol. II, pp. 987-988.

[78] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 306, 312.

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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