REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HR MALL, INC., Petitioner,	**CTA CASE NO. 9981**
	Members:
- versus -	**CASTAÑEDA, JR.** *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 12 2022 2:13 pm

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AMENDED DECISION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration (on the Decision dated 12 November 2021)** filed on December 9, 2021, without respondent's comment despite due notice, as per Records Verification dated March 8, 2022.

On November 12, 2021, the Court promulgated a Decision upholding respondent's deficiency tax assessments for taxable year 2014 in the aggregate amount of ₱78,879,339.07 for petitioner's failure to file a valid protest, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner primarily insists that it timely filed a valid protest. Petitioner argues that Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 3 of Revenue Regulations (RR) No. 12-99,[1] as amended by RR No. 18-2013,[2] does not require that the letter protest should specifically state the words "*reconsideration*" or "*reinvestigation*" or even the phrases "*plea of re-evaluation on the basis of existing records*" or "*on the basis of newly discovered or additional evidence*". Petitioner continues that what the rule instead requires is that the taxpayer shall "state" the nature of the protest whether it be for reconsideration or reinvestigation – which it claims that its protest letter dated January 15, 2018 complied with.

Petitioner further points out that even Regional Director Glen A. Geraldino of Bureau of Internal Revenue (BIR) Revenue Region No. 8 – Makati City, recognized that what petitioner filed was a letter protest requesting for reinvestigation based on his letter-reply dated February 27, 2018,[3] stating the subject therein as, "*Subject: Action on Protest Letter dated January 25, 2018 Request for Reinvestigation*". Thus, petitioner asserts that since the protest letter is valid, and was timely filed, respondent's assessment notices has not become final, executory, and demandable.

Moreover, petitioner likewise claims that the assessment notices: *Preliminary Assessment Notice* (PAN) dated November 16, 2017, *Formal Assessment Notice* (FAN) dated December 15, 2017, and *Warrant of Distraint and/or Levy* dated November 6, 2018 are all null and void based on the following grounds: (i) petitioner's right to due process was violated; (ii) the period to assess petitioner for all internal revenue taxes for most part of the taxable year 2014 has already prescribed; (iii) lack of valid *Letter of Authority* (LOA); and, (iv) failure of respondent to state the facts and the law in which the assessment is made. Lastly, petitioner maintains that it has no unpaid and/or deficiency taxes for taxable year 2014.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

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[1] "SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty", dated September 6, 1999.

[2] "SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment", dated November 28, 2013.

[3] Exhibit "P-9".

To start off, this Court deems it proper to clarify the discussion on the issue of jurisdiction in relation to the validity of petitioner's protest letters, in the light of the ruling made by the Supreme Court in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper, Incorporated ("CTA – Third Division case"* hereafter for brevity).[4]

Jurisprudence has consistently held that 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. xxx [I]t 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.[5]

Perforce, the rule is that for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the respondent to warrant a decision from which a petition for review may be taken to this Court.[6] Otherwise, the tax assessment becomes final, executory and demandable. And a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same can no longer be contested,[7] thus depriving the Court of its jurisdiction to resolve the merits of the case.

In the *CTA – Third Division case*, the Supreme Court had the opportunity to further elucidate that Section 228 of the NIRC of 1997, as amended, requires that administrative protests against assessments conform to RR No. 12-99, as amended by RR No. 18-2013. Failing which, there is no administrative protest to speak of, and no decision on a disputed assessment to assail. As such, when a petition for review is filed before this Court, without validly contesting the assessment, **the appeal is premature**, and the Court has no jurisdiction, thus:

> "Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period, <u>but also 'in such form</u>** ℛ

[4] G.R. No. 239464, May 10, 2021.
[5] *Bernadette S. Bilag, et al. v. Estela Ay-ay, et al.*, G.R. No. 189950, April 24, 2017.
[6] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.
[7] *Ibid.*

<u>and manner as may be prescribed by implementing rules and regulations</u>.' [*Citysuper, Inc.'s*] April 29, 2015 letter did not comply with three requirements of Revenue Regulations No. 18-2013.

The Court of Tax Appeals is a court of special jurisdiction. Section 7 of Republic Act No. 9282 states what matters involving Commissioner of Internal Revenue are within its exclusive appellate jurisdiction:

> SECTION 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;
> >
> > (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]

In [*Citysuper, Inc.'s*] Petition for Review, it contended that its Petition was timely filed because it was assailing the July 13, 2015 letter, which it claimed was [*CIR's*] 'final decision on the matter of [*Citysuper, Inc.'s*] protest against the deficiency tax assessments for the taxable year 2011.'

This argument is inaccurate. *gr*

In *Commissioner of Internal Revenue v. Villa*, this Court held that the Court of Tax Appeals' jurisdiction was over the Commissioner of Internal Revenue's decision on the protest against an assessment, and not the assessment itself. Thus, the period to invoke judicial review must be counted from receipt of the Commissioner's decision on the disputed assessment.

Here, however, [*Citysuper, Inc.'s*] protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code. [*Citysuper, Inc.'s*] erred in claiming that the July 13, 2015 letter was [*CIR's*] 'final decision' on its protest, there being no valid protest to speak of. Notably, the July 13, 2015 letter did not discuss the merits of any communication sent by [*Citysuper, Inc.*] after its April 29, 2015 letter, but merely stated that no valid protest was filed.

The circumstances here are analogous to those in *Ker & Company, Ltd. v. Court of Tax Appeals*, where this Court found that the material date was the issuance from the Commissioner which contained the original demand, and not its reiteration:

> It is argued that the decision or ruling of the Collector which should be appealed to the Tax Court is the former's letter dated January 5, 1954 (Exh. 13), and that the 30-period provided in section 11, commenced to run only on February 1, 1956, the date on which the petitioner-appellant received the Collector's letter dated January 23, 1956. This contention is without merit. The Collector's letter dated January 23, 1956, partly reads as follows:
>
>> 'With reference to your letter dated August 1, 1955, concerning the deficiency income tax liabilities of Ker & Co., Ltd., Manila, for 1947, 1948, 1949 and 1950, I regret to have to inform you that, notwithstanding your allegations therein, this Office still finds no justification to alter, reverse

> or modify the assessments issued against your client for said years.
>
> As elucidated in our letter to you of January 5, 1954, the alleged home-leave liabilities which your client claimed as deduction were disallowed as such because the same were not actually incurred but were mere reserve accounts for contingent purpose. No evidence were presented by you showing that the said expenses were actually incurred in the years of their deductions or in the subsequent years....'.

It is thus noted that the allegation in the above quoted letter is simply a reiteration of the previous demand as contained in the Collector's letter of January 5, 1954 (Exh. 13). Again the Collector sent to the petitioner-appellant the demand letter dated July 28, 1954 (Exh. 18), which merely reiterated the demand dated January 5, 1954. Although petitioner denied having received said letter, yet it is significant to mention that when it was presented had not objected to it. This is the first time they attack its receipt. It is finally to be observed that the ruling of the Collector contained in his letter of January 5, 1954, remained unaltered and unmodified. As the Court *a quo* has correctly commented –

> 'Under the facts stated above, we find that the decision of respondent which is appealable to this Court under Sections 7 and 11 of Republic Act No. 1125 is the one contained in his letter of January 5, 1954, the same having remained unaltered and unmodified up to the date the appeal was filed (See Angel Saraos v. CIR, CTA Case No. 229, March 5, 1956; Merced Drug Store v. CIR, CTA Case No. 180, May 21, 1956....
>
> Moreover, since a letter of demand or assessment was sent by the Collector of Internal Revenue to a

> taxpayer contains a determination of the tax liability of the latter, such letter or assessment must be considered as the 'decision' appealable to this Court. The Supreme Court appears to recognize the same view when it held that the assessment made by the Collector of Internal Revenue is the substantive and dispositive part of his decision' (Ventanilla v. BTA, G.R. No. L-7384, prom. Dec. 19, 1955). Under circumstances comparable with our law, the United States Supreme Court in the case of Gull v. U.S. (1935, 295 U.S. 247; 79 L. ed., 1941) sustained the same theory that the assessment is the action of an administrative agency equivalent to a decision and is therefore given the force of a judgment'.

This being the case, it logically follows that the decision which was appealed was that of January 5, 1954 and that the 30-day period should have started from the receipt of the said letter on January 25, 1954 (Exh. 14). No appeal having been taken from this decision, the same became final, conclusive and executory (Roxas v. Sayoc, G.R. No. L-8502, Nov. 29, 1956.

When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the appeal is premature and the Court of Tax Appeals has no jurisdiction:

Since in the instant case the taxpayer appealed the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Citation omitted) *gr*

> **Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue.** [*Citysuper, Inc.'s*] April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. **There was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the Court of Tax Appeals had no jurisdiction over the Petition for Review assailing the July 13, 2015 letter.**" *(Emphases and underscoring added; Citations omitted)*

In the assailed Decision, the form and manner of protests to be filed by the concerned taxpayer has been clearly and distinctively defined. Particularly, a distinction has been made between the two (2) types of protest, *i.e.*, a *request for reconsideration* and a *request for reinvestigation*. Thus, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside.[8]

Similar to the *CTA – Third Division case*, the Court found that the supposed *Protest Letter* dated January 15, 2018 and *Supplemental Protest* dated January 25, 2018 filed by petitioner failed to state whether its protest is a *request for reconsideration* or a *request for reinvestigation*. Assuming *arguendo* that the Court ignore the said requirement, it still cannot determine whether they are *requests for reconsideration* or *requests of reinvestigation*, since there is no plea of re-evaluation either "*on the basis of existing records without need of additional evidence*" or "*on the basis of newly discovered or additional evidence that the taxpayer intends to present*". Such being the case, there is no administrative protest to speak of, and no decision on a disputed assessment to assail, in this case. Correspondingly, petitioner's judicial appeal is premature and the Court has no jurisdiction to entertain the same.

It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[9] Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not

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[8] Please see *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

[9] *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

a natural right or a part of due process but is merely a statutory privilege. **Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.**[10]

In view of the foregoing disquisitions, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without binding legal effect.[11]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (on the Decision dated 12 November 2021) is rendered **MOOT**. Accordingly, the dispositive portion of the Court's Decision dated November 12, 2021, is amended to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.
>
> **SO ORDERED.**"

SO ORDERED.

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

We Concur:

(with Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[10] *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, June 11, 2012

[11] *Bernadette S. Bilag, et al. v. Estela Ay-ay, et al.*, G.R. No. 189950, April 24, 2017.

ATTESTATION

I attest that the conclusions in the above Amended 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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

HR MALL, INC.,
Petitioner,

CTA CASE NO. **9981**

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: APR 12 2022 2:13 PM

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SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the dismissal of the instant Petition for Review for lack of jurisdiction. Following the Supreme Court's ruling in *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated*[1] (**Citysuper**), the *ponencia* correctly declared that the Court has no jurisdiction over the instant case as the petition was filed without validly contesting the assessment with respondent Commissioner of Internal Revenue (**respondent/CIR**).

In dismissing the case for lack of jurisdiction, the Court deviated from its earlier ruling dated 12 November 2021, where it held that it has jurisdiction over the instant case on the ground that it may look into the validity of the Warrant of Distraint and/or Levy (**WDL**) issued by respondent, pursuant to Section 7(a)(1)[2] of Republic Act (**RA**) No. 1125, as

[1] G.R. No. 239464, 10 May 2021.

[2] Sec. 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue[.] (Emphasis supplied.)

amended, particularly on "other matters" arising out of the National Internal Revenue Code (**NIRC**) or other laws administered by the Bureau of Internal Revenue (**BIR**).

On this score, I wish to add and clarify that even assuming that the assessment was validly disputed, the Court likewise has no jurisdiction to rule on the validity or invalidity of the WDL under "other matters" because, in the first place, petitioner failed to file a timely appeal.

The 30-day period within which to file an appeal from the decision or ruling of respondent, as provided in Section 11[3] of RA No. 1125, as amended, is jurisdictional and failure to comply therewith would bar the appeal and deprive the 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.[4]

Here, the records disclose that petitioner received communications from the BIR on the following respective dates:

Date Received	Communication from the BIR	Exhibit No.
2nd week of March 2018	Letter dated 27 February 2018	"P-9"
09 July 2018	Preliminary Collection Letter (**PCL**) dated 02 July 2018	"P-10"
17 July 2018	Final Notice Before Seizure (**FNBS**) dated 12 July 2018	"P-13"
15 November 2018	Warrant of Distraint and/or Levy (**WDL**) dated 06 November 2018	"P-3"

A perusal of the Letter dated 27 February 2018[5] issued by the BIR, which was received by petitioner sometime in the 2nd week of March 2018, shows that it should be considered as respondent's "final decision" appealable before this Court as it was clearly stated therein that the assessment in the Formal Assessment Notice (FAN) dated 15 December

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

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

[5] Exhibit "P-9".

2017[6] became final, executory and demandable for petitioner's failure to file a valid protest within the time prescribed by Section 3.1.4 of Revenue Regulation (**RR**) No. 18-2013.[7]

Having been informed of the finality of the assessment, petitioner should have then invoked the Court's jurisdiction by filing its Petition for Review within the 30-day period from receipt of the said Letter dated 27 February 2018.

Even if the Letter dated 27 February 2018 is not treated as the "final decision" appealable before this Court, petitioner should have filed its Petition for Review within 30 days from 09 July 2018, the date of the PCL's receipt or until 08 August 2018. Further, even if the Court disregards the existence of the PCL, similarly, petitioner should have filed its petition within the aforesaid period from 17 July 2018 (the date of its receipt of the FNBS, or until 16 August 2018). Unfortunately, petitioner chose to file a Petition for Review only on 06 December 2018, which was already beyond the period allowed by law.

Relevant portions of the PCL[8] and the FNBS[9], respectively, read as follows:

> PCL
>
> ...
>
> To avoid accumulation of interest and surcharges, it is requested that you pay the aforesaid tax liability/ties within ten (10) days from receipt hereof, at the Collection Division, 3rd Floor, BIR Building, 313 Sen. Gil J. Puyat Avenue, Makati City. However, if payment had already been made, please send or bring to us copies of the receipts of payment together with this letter to be the basis for cancelling/closing of your tax liability/ies. **Otherwise, we shall be constrained to enforce the collection thereof, through the administrative summary remedies provided for by law, without further notice.**
>
> ...
>
> FNBS
>
> ...
>
> In this connection, we would like to inform you that we are again giving you the last opportunity to make the necessary settlement of the above stated tax liability/ies within ten (10) days from receipt of this notice.

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6 Exhibit "P-2".

7 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

8 Exhibit "P-10"; Emphasis supplied.

9 Exhibit "P-13"; Emphasis supplied.

> **Should we fail to hear from you within this period, this office, much to our regret, will be constrained to serve and execute the Warrant of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account.** Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for filing of appropriate judicial action.
>
> ...

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[10], the Court considered the language used and the tenor of the letter sent to the taxpayer as the CIR's final decision, taking into consideration that the CIR stated that failure to settle tax liabilities will result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice".

The subsequent issuance on 06 November 2018 of a WDL, which petitioner received on 15 November 2018, only further emphasizes the finality of respondent's decision.

In herein case, although the tenor of the Letter dated 27 February 2018[11], PCL[12] and FNBS[13] signified a character of finality which is tantamount to a denial of petitioner's protest, petitioner failed to file an appeal before this Court. Instead, petitioner filed its appeal only after receiving the WDL.

In fine, the final decision of the BIR by way of its issuance of the Letter dated 27 February 2018, the PCL, or the FNBS, already became final, executory and demandable by operation of law. Otherwise stated, considering petitioner's failure to file a timely appeal, the Court was deprived of its jurisdiction to act on the instant Petition for Review, much more to decide the case on the merits.

In any case, while the Court has on several occasions allowed the filing of an appeal outside the period prescribed by law in the interest of justice and in the exercise of its equity jurisdiction, petitioner has not shown to the Court's satisfaction that under the circumstances obtaining in this case there exists a strong, compelling reason for the belated filing of its appeal so as to warrant the relaxation of the strict application of the rules of procedure.

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10 G.R. No. 148380, 09 December 2005, 477 SCRA 205.
11 Supra at note 5.
12 Supra at note 8.
13 Supra at note 9.

All told, I vote to **DISMISS** the instant Petition for Review for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice