REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

ZENOREX MARKETING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10729

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 1 5 2025 4:20 pm

x - x

RESOLUTION

FERRER-FLORES, J.:

Submitted before this Court is petitioner's **Motion for Partial Reconsideration (Re: Decision dated 31 March 2025)** filed on April 22, 2025, with respondent's **Comment and/or Opposition (to Petitioner's Motion for Partial Reconsideration [Re: Decision dated March 31, 2025])** filed on May 19, 2025.

On March 31, 2025, the Court promulgated a Decision dismissing the *Petition for Review* for lack of jurisdiction due to petitioner's failure to indicate the nature of the protest filed and the date of the assessment notice being protested, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the present *Petition for Review* is **DISMISSED** on jurisdictional grounds.
>
> **SO ORDERED**.

In its *Motion*, petitioner primarily insists that the Court has jurisdiction over the *Petition for Review* inasmuch as the Protest dated February 4, 2015, filed on February 6, 2015 with the Bureau of Internal Revenue (BIR) is a request for reconsideration based on the following arguments, *viz.*:

i. the Protest was based on documents and pieces of evidence already submitted by petitioner to respondent;

ii. notwithstanding the absence of an explicit statement on the nature of the Protest, the Protest is deemed as a request for reconsideration in accordance with Revenue Memorandum Order (RMO) No. 26-2016 dated June 13, 2016; and,

iii. in any case, the circumstances of the instant case warrant the relaxation of Revenue Regulations No. 18-2013 as grave miscarriage of law and injustice will be perpetrated if respondent's assessment is upheld.

As to the first argument, petitioner asserts that while the subject Protest does not explicitly state the nature thereof, a simple reading of the same readily reveals that it was one for reconsideration inasmuch as the Protest simply pleaded for a re-evaluation of the existing records without need for additional evidence. Petitioner maintains that the term "relevant supporting documents" means that it is the taxpayer who has the prerogative to submit the pieces of evidence it deems best to support its protest. As such, petitioner submits that the Protest should have been treated as a request for reconsideration notwithstanding the non-submission of supporting documents since petitioner was merely exercising its prerogative to submit documents it deems best to support its Protest.

With regard to the second argument, petitioner claims that RMO No. 26-2016[1] explicitly provides that all protest shall be considered a request for reconsideration, unless said protest clearly indicates that it is a request for reinvestigation. Petitioner expounds that based on the said RMO, respondent's treatment of the Protest as a request for reinvestigation has no basis since there is nothing in the said Protest that states that petitioner was requesting for reinvestigation or that additional supporting documents will be submitted. Petitioner further points out that the pieces of evidence referred to in the Protest are already existing in the records of respondent.

As to the third argument, while petitioner acknowledges that procedural rules are not to be belittled, it still humbly requests for the Court to relax the application of Revenue Regulations (RR) No. 18-2013[2] in order to serve the ends of justice and to prevent a grave miscarriage of the law. Petitioner, nonetheless, reiterates that respondent's assessment is void for failing to observe petitioner's right to due process in not issuing a Notice of Informal

---

[1] SUBJECT: Policies and Guidelines in Handling Disputed Assessments", dated June 13, 2016.
[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.

Conference (NIC) before the issuance of Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN). Petitioner claims that a void assessment bears no valid fruit.

Lastly, petitioner argues that, assuming without admitting, that the FAN was valid, respondent's right to collect the deficiency taxes should have been barred by prescription.

On the other hand, in his *Comment*, respondent asserts that the Court correctly ruled that there were no valid administrative protest and no decision on a disputed assessment in the present case that would warrant an appeal to this Court. He contends that the tenor of petitioner's Protest clearly entails the reception of additional documents and not just review of what was already existing in the records. Respondent continues that when petitioner pleaded for re-evaluation of existing records, it submitted additional documents that were not among those listed in the transmittal letter (*i.e.*, official receipts, Philippine Economic Zone Authority [PEZA] certificates, and value-added tax [VAT] exemption certificates). As such, respondent submits that petitioner's Protest is one of reinvestigation and not reconsideration.

Respondent also points out that RMO No. 26-2016, that was cited and heavily relied on by petitioner as part of its argument, was not yet in existence, more so controlling, at the time the Protest was filed on February 6, 2015 since the said RMO only became effective 16 months from filing of petitioner's protest. He likewise submits that RR No. 18-2013 is not a mere procedural rule that can be relaxed in favor petitioner since it affects the jurisdiction of the Court. Lastly, respondent avers that the NIC is not required in the present case considering that the then prevailing issuance at the time of petitioner's deficiency assessment was RR No. 12-99,[3] as amended by RR No. 18-2013, which does not require the issuance of a NIC during the assessment process.

After due consideration, the Court finds petitioner's *Motion for Reconsideration* bereft of merit.

To reiterate, this Court has exclusive appellate jurisdiction, *inter alia*, over decisions of respondent in cases involving "disputed assessments". Under Section 7(1) of Republic Act (R.A.) No. 1125,[4] as amended, the Court exercises exclusive appellate jurisdiction to review not the assessments themselves, but the *decisions involving disputed ones* arising under the National Internal

---

[3] 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty dated September 6, 1999.

[4] AN ACT CREATING THE COURT OF TAX APPEALS.

Revenue Code (NIRC) of 1997, as amended.[5] Simply put, 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 enforceable, thus depriving the Court of its jurisdiction to resolve the merits of the case.

Apropos, Section 228 of the NIRC of 1997, as amended, provides that an assessment may be protested administratively by filing a request of reconsideration or reinvestigation within 30 days from receipt thereof *"in such form and manner as may be prescribed by implementing rules and regulations"*.[7] In this regard, Section 3.1.4 of RR No. 12-99, as amended, reads in part that *"[t]he 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, <u>otherwise, his protest shall be considered void and without force and effect</u>."[8] Notably, the afore-quoted provision explicitly states that "the taxpayer **SHALL** state in his protest*"*, which connotes a mandatory character. Perforce, jurisprudence and statutory construction speaks that the word "shall" indicates a word of

---

[5] Refer to *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152532, August 16, 2005.

[6] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

[7] **Section 228**. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

x x x

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.

x x x. (Emphasis supplied)

[8] *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:

x x x

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

x x x

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. x x x.

command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.[9]

Here, it is clear that petitioner's protest against the FAN fell short of the requirements of a valid protest. Failing which, there is no administrative protest to speak of, and consequently, no decision on a disputed assessment to assail. The *Petition for Review* filed before the Court is, therefore, premature and the Court has no jurisdiction to entertain the same, as held in the assailed Decision:

> In this case, a careful perusal of petitioner's supposed protest dated February 4, 2015 reveals that while the petitioner indicated a certain form of legal basis to support some of its arguments against the FAN, it failed to state the nature of the protest and the date of the assessment notice. Nowhere is it stated whether its protest is a request for reconsideration or a request for reinvestigation, as required under the aforequoted provisions of Section 3 of RR No. 12-99, as amended by RR No. 18-2013
>
> x x x
>
> On its face, it would appear that the petitioner intended to request for reconsideration on the basis of existing records without need of additional evidence. However, upon reviewing the Transmittal dated November 21, 2012, there is no indication that official receipts, cash vouchers, sales invoices supporting the petitioner's claims were transmitted. This was further corroborated by the testimony of the petitioner's witness, Ms. Cheryl R. Samonte, during cross-examination, who confirmed that only schedules were transmitted on November 21, 2012.
>
> This omission would reasonably lead the BIR to interpret the petitioner's request as one for reinvestigation, with the expectation that supporting documents would be submitted at a later time. Consequently, in its Letter dated March 3, 2015, the respondent informed the petitioner that the entire docket together with the Letter of Protest will be forwarded to Revenue District Office No. 50 - South Makati for reinvestigation and requested the petitioner to submit at the said district the necessary documents to support its claim/disagreements within 60 days from the date of filing of its protest letter pursuant to Section 3.1.5 of RR No. 12-99, as amended by RR 18-2013.
>
> Had the petitioner intended to file a request for reconsideration, rather than reinvestigation, it could have made its position very clear that it is not seeking reinvestigation of the assessment made against it upon receipt of the Letter dated March 3, 2015 which effectively granted the petitioner's request for reinvestigation.
>
> Based on the foregoing, it is clear that the petitioner's protest against the FAN fell short of the requirements of a valid protest. Consequently, there is no disputed assessment to speak of.
>
> As such, the said protest is considered void and without force and effect. Correspondingly, while the assailed FDDA dated December 23, 2021,

---

9 *UCPB General Insurance Company, Inc. v. Hughes Electronics Corporation*, G.R. No. 190385, November 16,2016.

> is denominated as such, it cannot be treated as a decision appealable to this Court, since it is not a decision of respondent involving a disputed assessment, pursuant to the aforequoted Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282.[10]

Moreover, the submission of additional documentary evidence, particularly the PEZA Certificates and VAT Exemptions Certificates, which were not among those mentioned in the Transmittal dated November 21, 2012, simultaneous with the filing of the Protest dated February 4, 2015, clearly indicates that petitioner is seeking a re-evaluation of its tax assessments not merely on the basis of existing records but also in light of the newly submitted documents. This intention was further corroborated by the testimony of petitioner's witness,[11] to wit:

> Q36: What happened next, if any?
> A36: We were not able to hear anything from the BIR for several years and **we were under the impression that they were properly considering all the documents that we submitted during the audit <u>as well as in the protest</u>.**
>
> xxx (*Emphasis and underscoring added*)

With regard to the argument that respondent's right to collect had already prescribed, which petitioner raised in its *Motion*, the Court notes that such was not stipulated as an issue in the Pre-Trial Order. Neither did petitioner present any evidence of the fact of collection initiated by respondent nor did it even invoke the "other matters jurisdiction of the Court" to include the collection. Clearly, the Court never had jurisdiction over collection.

The Court is not unaware that the fact that the subject assessment has become final and executory for failure of petitioner to file a proper protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. The validity of the assessment itself, however, is a separate and distinct issue from the issue of whether the right of the CIR to collect may be enforced. The issue of collection, being a matter provided for by the NIRC of 1997, as amended, is well within the jurisdiction of the Court to decide, pursuant to Section 7(a)(1) of R.A. 1125, as amended by R.A. 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 [Code]** or other laws administered by the Bureau of Internal Revenue[.] *(Emphasis supplied)*

---

[10] Docket – Vol. 9, pp, 4729-4730
[11] Second Amended Judicial Affidavit of Cheryl R. Samonte; Docket – Vol. 8, p. 4104.

Pertinently, Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, provides for the 30-day period to file an appeal:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. **A Division of the CTA shall hear the appeal**: xxx. *(Emphasis supplied)*

Based on the foregoing, the exclusive appellate jurisdiction of this Court in Division is not limited to cases involving decisions of the respondent CIR on matters relating to assessments or refunds.[12] The second part of Section 7(a)(1) of the R.A. No. 1125, as amended by R.A. No. 9282, covers the cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR.[13] The wording of the provision is clear and simple.[14]

Notably, in this case, petitioner neither raised any issue relative to the collection of the alleged deficiency tax liability, nor did it present any evidence of collection proceedings initiated by respondent. The Court also notes that petitioner filed the instant *Petition for Review* on January 24, 2022, which is within the extended reglementary period to file its judicial appeal, counted from its receipt of respondent's Decision. Clearly, the Court never acquired jurisdiction over collection proceedings, which may fall under its "other matters" jurisdiction.

Time and again the Court emphasizes that jurisdiction is a matter of substantive law. When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case.[15] The Court cannot decide the case on the merits.[16] Simply stated, 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. Correspondingly, the Court need not belabor on the other issues advanced by petitioner.

---

[12] *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022.

[13] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[14] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[15] *Alfredo J. Non, et al. v. Office of the Ombudsman, et al.*, G.R. No. 251177, September 8, 2020.

[16] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its *Motion for Partial Reconsideration*, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision dated 31 March 2025)** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice