Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ROBERTO O. YANGCO, *Petitioner,*	**CTA CASE NO. 9388**
-versus-	Members: CASTAÑEDA, JR., Chairperson, and MINDARO-GRULLA, *JJ.*
THE REVENUE DISTRICT OFFICER OF REVENUE DISTRICT NO. 8 OF THE BUREAU OF INTERNAL REVENUE, BAGUIO CITY, and THE REGIONAL DIRECTOR OF REVENUE REGION NO. 2 OF THE BUREAU OF INTERNAL REVENUE, BAGUIO CITY, *Respondents.*	Promulgated: MAY 23 2019 1:05 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on October 5, 2018 is a Petition for Review[1] filed by petitioner Roberto O. Yangco on July 20, 2016, praying that the Revenue District Officer of Revenue District No. 8 of the Bureau of Internal Revenue (BIR), Baguio City, and the Regional Director of BIR Revenue Region No. 2, Baguio City, be prohibited and enjoined from collecting, *via* garnishment or seizure, petitioner's properties for his alleged deficiency tax in the amount of ₱10,355,306.68 for taxable year 2010; and, that after trial, the subject deficiency assessments be declared null and void.

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[1] Docket, pp. 10-22.

Petitioner is of legal age, Filipino and with office address at Pua Building, Legarda Road cor. Carino St., Baguio City. He is the owner/proprietor of Asean Supermart, a duly organized and licensed business located at Legarda Road cor. Carino St. in Baguio City where he may be served with summons and other court processes.[2]

On the other hand, respondent Revenue District Officer of BIR Revenue District No. 8 is the head of a sub-unit of the BIR with office address at 1/F BIR 69, Leonard Wood Road, Baguio City where he/she may be served with summons and other court processes, whereas, respondent Regional Director is the head of BIR Revenue Region No. 2 - Cordillera Administrative Region (CAR) with office address at 69 Leonard Wood Road, Baguio City.[3]

On September 8, 2011, petitioner received a Letter of Authority (LOA) No. 008-2011-0000010[4] dated September 7, 2011 issued by then OIC Regional Director Eduardo T. Bajador of Revenue Region No. 2 - CAR, authorizing Revenue Officers Abelyn Palangdan and Group Supervisor Jimmy Tangonan to examine petitioner's books of accounts for taxable year 2010.

On September 4, 2012, petitioner received a Notice of Informal Conference[5] (NIC) dated August 30, 2012 from respondent Revenue District Officer, informing petitioner that, after investigation, he has been found liable for deficiency Income Tax, Value-added Tax, and Expanded Withholding Tax for the period January 1 to December 31, 2010 in the total amount of Ten Million Three Hundred Fifty-Five Thousand Three Hundred Six Pesos and Sixty-Eight Centavos (₱10,355,306.68).

Thereafter, a Preliminary Assessment Notice[6] (PAN) dated October 18, 2012 was issued by respondent Regional

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[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 204.
[3] Par. 2. *Ibid*, p. 205.
[4] Exhibit "R-7".
[5] Exhibit "P-2 with sub-markings P-2-a to P-2-f"; Exhibit "R-8".
[6] Exhibit "R-10".

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Director reiterating their finding of deficiency tax to be paid by petitioner.[7]

A Formal Letter of Demand[8] (FLD) dated January 4, 2013 with attached Details of Discrepancies, was subsequently issued by respondent Regional Director formally demanding payment of petitioner's tax liabilities which are broken down as follows, *viz.*:

DEFICIENCY TAXES:	
Income Tax	₱ 7,531,326.69
Value Added Tax	2,818,820.00
Expanded Withholding Tax	5,160.00
TOTAL DEFICIENCY TAXES:	**₱10,355,306.68**

On February 11, 2013, petitioner filed a Formal Protest[9] dated February 9, 2013 addressed to respondent Regional Director arguing primarily that there was no due service of the LOA, NIC, PAN, and FLD.

On April 8, 2013, petitioner received a Tax Verification Notice (TVN) No. 2003-00152858[10] dated March 14, 2013 from respondent Revenue District Officer, requiring petitioner to submit additional documents in support of his Formal Protest dated February 9, 2013.

Subsequently, on June 5, 2013, petitioner received a Letter[11] dated May 29, 2013 from respondent Revenue District Officer, informing petitioner that, as of that date, he has not yet submitted any documentary evidence to support his Formal Protest.

On June 13, 2013, petitioner filed a Letter-reply[12] dated June 11, 2013 to respondent Revenue District Officer in response to the latter's TVN and Letter respectively dated March 14 and May 29, 2013. In his letter, petitioner claims

[7] Par. 3, Admitted Facts, JSFI, Docket, p. 205.
[8] Exhibit "R-11".
[9] Exhibit "P-6"; Exhibit "R-14".
[10] Exhibit "P-7".
[11] Exhibit "P-8"; Exhibit "R-16".
[12] Exhibit "R-17".

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that his bookkeeper already had previously submitted the documents required and, further, re-pleads their position in the Formal Protest.

Then, on July 1, 2013, petitioner received a Letter[13] dated June 26, 2013 from respondent Revenue District Officer informing petitioner that his Formal Protest dated February 9, 2013 has been denied for lack of legal and factual bases. The letter disclosed that petitioner have not introduced any evidence to overthrow the deficiency assessments issued against him.

On October 22, 2013, petitioner filed another Formal Protest [14] dated September 30, 2013, but this time, addressed the same to then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares.

As per letter dated December 16, 2013 from respondent Regional Director, the latter informed petitioner that the tax deficiency assessment against him had become final and executory.[15]

On September 4, 2014, petitioner received a Preliminary Collection Letter[16] (PCL) dated August 28, 2014, informing petitioner that the FLD dated January 4, 2013 remains unpaid. Thus, respondents would be compelled to enforce collection of the said tax liabilities in the total amount of ₱10,355,306.68 if settlement is not immediately made.

On March 3, 2015, petitioner received a Second Notice[17] dated March 2, 2015 issued by respondent Revenue District Officer informing petitioner that the PCL dated August 28, 2014 still remains unpaid.

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[13] Exhibit "R-18".
[14] Exhibit "P-10"; Exhibit "R-19".
[15] Par. 9, Admitted Facts, JSFI, Docket, p. 205.
[16] Exhibit "P-13"; Exhibit "R-20".
[17] Exhibit "R-21".

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Thus, on May 19, 2015 respondent Revenue District Officer issued a Final Notice Before Seizure [18](FNBS) which petitioner received on May 21, 2015. The said notice gave petitioner a final opportunity until May 29, 2015 within which to settle his tax liabilities otherwise, collection thereof would be enforced.

Meanwhile, on May 27, 2015, petitioner filed a Prohibition and Injunction with Preliminary Injunction/TRO[19] with the Regional Trial Court (RTC) of Baguio City praying that respondents' tax collection be enjoined while petitioner's Formal Protest dated September 30, 2013 with the CIR remains unresolved. The case was raffled to RTC Branch No. 3 and was docketed as Civil Case No. 8240-R.

In an Order[20] dated June 8, 2015, the RTC Branch No. 3 of Baguio City denied petitioner's application for a Temporary Restraining Order (TRO) reasoning that petitioner failed to meet all the requirements before an injunctive relief may be issued by the court.

On June 10, 2015, respondents, through the legal division of the BIR Revenue Region No. 2, filed a Motion to Dismiss[21] on the ground that the RTC Branch No. 3 of Baguio City has no jurisdiction to hear and decide the case.

Consequently, in an Order[22] dated August 18, 2015, the RTC Branch No. 3 of Baguio City granted respondents' Motion to Dismiss for lack of jurisdiction. The lower court ruled in favor of respondents stating that the subject matter of the suit is within the ambit of the Court of Tax Appeals (CTA).

On November 20, 2015, the RTC Branch No. 3 of Baguio City issued an Order[23] denying petitioner's second Motion for Reconsideration reasoning, among others, that

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[18] Exhibit "P-14"; Exhibit "R-22".
[19] Exhibit "R-1".
[20] Exhibit "R-3".
[21] Exhibit "R-2".
[22] Exhibit "R-4".
[23] Exhibit "R-5".

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the term "general jurisdiction" apples only in the absence of a law specifically vesting in one court or agency jurisdiction over a certain type of suit.

On July 20, 2016, petitioner filed with the CTA the instant Petition[24] with Prohibition and Injunction primarily claiming that the subject assessments are void.

In an Order[25] dated August 24, 2016, this Court resolved to grant the Petition for Prohibition and Injunction, which this Court treated as a Motion for Suspension of Collection of Taxes under the Revised Rules of the CTA (RRCTA) in a preliminary hearing dated August 8, 2016, subject to the posting of an acceptable surety bond in an amount equal to one and one-half times of the alleged deficiency tax assessments in the amount of ₱15,532,960.02.

Meanwhile, respondents filed their Answer[26] on September 5, 2016, interposing the following special and affirmative defense, *viz.*:

> "4. The foregoing allegations are repleaded and incorporated herein by reference insofar as these are material and applicable.
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> 5. Respondents respectfully submits *(sic)* that the instant Petition failed to state any allegation showing jurisdiction of the Honorable Court as required in Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals. Nonetheless, respondents humbly submits *(sic)* that the Honorable Court has no jurisdiction over the instant petition, as hereunder be discussed.
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> 6. More importantly, petitioner violated his Certification Against Non-Forum Shopping as provided in Section 3, Rule 46 of the Rules of Court as he failed to declare that **the instant petition for prohibition and injunction was already filed and decided [*in*] the**

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[24] *Supra* No. 1.
[25] Docket (Vol. I), pp. 92-93.
[26] *Ibid*, pp. 94-102.

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Regional Trial Court of Baguio City in its Order dated August 18, 2015 and subsequent Order dated November 20, 2015, denying his Second Motion for Reconsideration. Copies of the said Decision and Order are hereto attached as Annex "1" and "2".

A. The Petition for Review must be dismissed for failure to conform to Rules regarding appeal to the Honorable Court

At the first instance, respondent[*s*] respectfully submits that they [*are*] improperly impleaded as respondents in this case. It is an elementary rule, under Republic Act No. 9282, that the Honorable Court shall exercise exclusive and appellate jurisdiction to review by appeal decisions or inactions of the Commissioner of Internal Revenue, to wit:

> 'Section 7. Jurisdiction. - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 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;
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> 2. **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the 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;
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Thus, it is respectfully submitted that based on the foregoing provision alone, the instant Petition must fail.

Jurisdiction, is the court's authority to hear and determine a case. The conferment of jurisdiction upon courts or judicial tribunals is derived exclusively from the constitution and statutes of the forum. In this jurisdiction, it is a power granted by the Constitution to the Supreme Court and conferred by law to other lower courts to hear and decide cases involving a justiciable controversy. A primary example of jurisdiction conferred by statute is that of the Honorable Court of Tax Appeals.

The Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases. By the nature of its functions, it is dedicated exclusively to the study and consideration of tax problems. For which reason, it is not hard to see why the law vested upon the Court of Tax Appeals the exclusive appellate jurisdiction to review decisions, orders [and] resolutions in tax cases. From the foregoing, it is easy to see that the Honorable Court is a court of special jurisdiction empowered to hear only certain kinds of cases specified by law. Specifically, as such court of special jurisdiction, the Honorable Court *can only try cases permitted by statute, i.e. RA 1125, as amended by RA 9282.*

Clearly, petitioner's resort to a wrong mode of appeal is fatal to its cause rendering the assessment final, executory and demandable. The case of *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co., et al.*, is instructive, to wit:

> **Although appeal is an essential part of our judicial process**, it has been held, time and again, that **the right thereto is not 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 <u>failure of a party to conform to the rules regarding appeal will render the judgment final and executory</u>. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is**

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> **erroneous or not and no court – not even the Supreme Court – has the power to revise, review, change or alter the same.** The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, **the judgment of courts** and the award of quasi-judicial agencies **must become final at some definite date** fixed by law.

Thus, it is beyond contestation that the Honorable Court has no jurisdiction over the instant case. As held by the Honorable Supreme Court, *when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action*.

C. Respondents' summary collection efforts against petitioner were validly enforced from a final and executory assessment against Petitioner

Even assuming that the petition may be construed to conform to the rules regarding appeal to the Honorable Court, it is most respectfully submitted that Petitioner's statutory right to appeal was already waived or lost.

In paragraph 9 of the Petition, petitioner averred that he received respondents' letter dated June 26, 2013, which was the denial of his Protest to the FLD/FAN for lack of factual and legal bases. Subsequently, in paragraph 10 of the same Petition, petitioner categorically stated that he elevated to the Commissioner of Internal Revenue ('CIR') his protest to the FLD/FAN.

With the foregoing allegations, respondents respectfully submit that the assessment has attained finality, by operation of law as it cannot be overemphasized that a taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, may be waived or lost as in this case.

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Pursuant to Revenue Regulations No. 12-99, in relation to Section 228 of the 1997 National Internal Revenue Code, as amended, 'if the protest is denied, in whole or in part, **by the Commissioner's duly authorized representative**, the taxpayer may either : (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner** within thirty (30) days from date of receipt of the said decision' (emphasis supplied).

However, petitioner failed to timely file his appeal before the CIR. As indicated in Annex 'I' of the Petition, petitioner received respondents' June 26, 2013 Decision on July 1, 2013. Thus, he had until July 31, 2013 within which to file a request for reconsideration to the CIR.

As admitted by petitioner, it was only on September 30, 2013 that he elevated is request for reconsideration before the CIR. Thus, respondents respectfully submit that the assessment has long become final and executory as evidenced by the summary collection efforts by BIR Revenue Region No. 2. It has long been held that, 'Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. In *Churchill & Tailt v. Rafferty* the Supreme Court held that '**We cannot tolerate taxpayers hampering expedient collection of taxes by their failure to act within a reasonable period.** No government could exist if all litigants were permitted to delay the collection of its taxes.'

Respondent likewise submits that petitioner failed to satisfy the requirements for injunction under the Rules of Court. It must be stressed that an injunction is only available upon proving two important requisite conditions namely: 1) the right to be protected exists prima facie; and 2) the acts sought to be prevented would cause irreparable injustice. The grounds for an injunction as provided in Section 3, Rule 58 of the 1997 Rules of Civil Procedure states:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief

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> consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
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> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
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> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

From the foregoing, petitioner's prayer for prohibition and injunction deserves no consideration as he is always wanting in the first requirement as the assessment was already final and due for collection. **Lacking a clear right**, there can be no irreparable damage to petitioner. The Supreme Court in *Equitable PCI Bank vs. OJ-Mark Trading, Inc.* declared:

> The possibility of irreparable damage without proof of actual existing right is no ground for an injunction. Hence, it os not sufficient for the respondents to simply harp on the serious damage they stand to suffer if the foreclosure sale is not stayed. They must establish such clear and unmistakable right to the injunction.

As to the warrant of garnishment allegedly collecting taxes for taxable year 2008, it cannot be gainsaid that the same was merely a typographical error as the amount being collected pertains to the assessed taxable year 2010.

All told, respondents respectfully submits [*to*] the Honorable Court [*that*] the summary collection efforts made by their agents are valid." *(Citations Omitted)*

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On September 14, 2016, this Court issued a Notice of Pre-Trial Conference[27] set on September 29, 2016 at 1:30 p.m. and, further, ordering them to file their respective pre-trial briefs at least three (3) days before the said date.

On September 21, 2016, petitioner filed a Non-Litigious Motion of Extension of Time to Post Bond[28] praying that an extension of fifteen (15) days be granted by the court within which to post the required surety bond due to petitioner's financial difficulty in securing the needed cash collateral.

Finding merit, this Court, in a Resolution[29] dated September 30, 2016, granted petitioner's motion for extension of time and gave the petitioner until October 4, 2016 within which to post the surety bond.

Subsequently, on September 23, 2016, respondents filed their Respondent's Pre-Trial Brief[30], while, petitioner, on the other hand, filed his Pre Trial Brief[31] on September 26, 2016 in compliance with this Court's directive.

Meanwhile, as per the Records Verification Report[32] dated October 27, 2016, petitioner failed to post the required surety bond. Thus, in a Resolution[33] dated November 7, 2016, this Court ruled that the Order dated August 24, 2016, granting petitioner's Motion to Suspend Collection of Tax, is lifted and set aside.

On February 16, 2017, respondents filed a Motion to Dismiss[34] praying that the instant case be dismissed for lack of jurisdiction considering that the Petition for Review failed to conform to the rules regarding appeal to the court; and, also, for being filed out of time.

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[27] *Id.*, pp. 111-112.
[28] *Id.*, pp. 127-129.
[29] *Id.*, p. 132.
[30] *Id.*, pp. 118-121.
[31] *Id.*, pp. 122-126.
[32] *Id.*, p. 134.
[33] *Id.*, p. 136.
[34] *Id.*, pp. 164-173.

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In a Resolution[35] dated February 22, 2017, this Court ordered petitioner to comment on respondents' Motion to Dismiss, and thereafter, the Motion shall be deemed submitted for Resolution.

However, as per Records Verification Report[36] dated March 13, 2017, petitioner failed to file comment on respondent's Motion to Dismiss.

On March 27, 2017, the parties submitted their Joint Stipulation of Facts and Issues[37] (JSFI).

On April 5, 2017, this Court issued a Resolution[38] granting respondents' Motion to Dismiss. As to the parties' JSFI, the same was rendered moot.

On April 25, 2017, petitioner filed a Motion for Reconsideration[39] of the dismissal of the case, mainly arguing that respondents' premature action to collect his alleged deficiency taxes transgresses his fundamental right to due process.

On May 15, 2017, respondents filed a Comment/Opposition Re: Petitioner's Motion for Reconsideration dated 25 April 2017[40] reiterating their position that petitioner belatedly filed his protest.

In a Resolution[41] dated June 9, 2017, this Court, to ascertain and verify the truth in the parties conflicting statements, reconsidered its ruling and granted petitioner's Motion for Reconsideration. Further, in an Order[42] dated July 3, 2017, the parties' JSFI was approved and the pre-trial conference was deemed terminated. Hence, a Pre-Trial Order[43] was issued by this Court on July 19, 2017.

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[35] *Id.*, p. 183.
[36] *Id.*, p. 188.
[37] *Id.*, pp. 204-212.
[38] *Id.*, pp. 213-220.
[39] *Id.*, pp. 222-225.
[40] *Id.*, pp. 228-236.
[41] *Id.*, pp. 238-241.
[42] *Id.*, pp. 243-244.
[43] *Id.*, pp. 255-259.

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On July 3, 2017, respondents filed a Motion for Reconsideration Re: Resolution dated 9 June 2017[44] insisting that the present case is clearly dismissible.

In a Resolution[45] dated August 17, 2017, this Court denied respondents' Motion for Reconsideration reiterating that presentation of evidence in a full-blown trial is warranted to ascertain the truth behind the parties' conflicting allegations.

On September 25, 2017, petitioner filed a Motion for Issuance of Subpoena Ad Testificandum[46] praying that this Court issue a subpoena against petitioner's named witness, Atty. Homer S. Alinsug, to appear and testify during the hearing on October 4, 2017. Thus, in a Resolution[47] dated October 3, 2017, this Court granted petitioner's Motion and, correspondingly, issued a Subpoena Ad Testificandum against Atty. Alinsug.

On October 18, 2017, petitioner filed a Formal Offer of Evidence[48] offering Exhibits "P-1" to "P-15", inclusive of sub-markings, as its documentary evidence. Respondents, on the other hand, filed their Opposition Re: Petitioner's Formal Offer of Evidence[49] on October 27, 2017.

In a Resolution[50] dated November 24, 2017, this Court admitted petitioner's exhibits except Exhibits "P-1", "P-3 with sub-markings P-3-a to P-3-b", "P-4", "P-5", "P-9", "P-12" and "P-15" for petitioner's failure to submit the original documents for comparison; and, Exhibits "P-11" and "P-11-a" for petitioner's failure to have the exhibits identified. With the admission of petitioner's exhibits, this Court deemed petitioner to have rested his case. Thereafter, this Court set the initial presentation of respondent's evidence on December 11, 2017.

[44] *Id.*, pp. 245-253.
[45] *Id.*, pp. 261-266.
[46] *Id.*, pp. 272-273.
[47] *Id.*, pp. 280-281.
[48] *Id.*, pp. 284-288.
[49] *Id.*, pp. 331-334.
[50] *Id.*, pp. 336-337.

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Respondents submitted the respective Judicial Affidavits of their Revenue Officers, Atty. Jesusa B. Rebudal-Jamon and Marcy Anne B. Salamat, on January 30, 2018 and February 26, 2018. After completing their respective testimonies, respondents filed a Formal Offer of Evidence[51] on March 12, 2018, offering Exhibits "R-1" to "R-23-a", inclusive of sub-markings. In response, petitioner filed by registered mail, on March 28, 2018, a Comment to Respondents' Formal Offer of Evidence[52].

In a Resolution[53] dated July 20, 2018, this Court admitted all of respondents' documentary exhibits, except Exhibit "R-6-a" for having no exhibit marking and, thereby, deemed respondents to have rested their case. Further, the parties were given a period of thirty (30) days upon receipt thereof within which to submit their respective Memorandum.

In compliance therewith, respondents submitted their Memorandum[54] on September 20, 2018, while, petitioner submitted his Memorandum for Petitioner[55] on September 25, 2018.

Consequently, in a Resolution[56] dated October 5, 2018, the instant case was deemed submitted for decision.

The following issues[57] were presented by the parties for this Court's resolution, *to wit*:

1. Whether petitioner committed a violation of the rule prohibiting forum shopping;

2. Whether respondent[*s*] should be prohibited and enjoined from collecting or causing the collection of

[51] Docket (Vol. II), pp. 437-447.
[52] *Ibid*, pp. 519-524.
[53] *Id.*, pp. 526-527.
[54] *Id.*, pp. 538-549.
[55] *Id.*, pp. 553-557.
[56] *Id.*, p. 558.
[57] Issues to be Tried and Resolved, JSFI, Docket (Vol. I), p. 206.

petitioner's assessed deficiency taxes for taxable year 2010;

3. Whether petitioner has validly filed a protest to the Commissioner of Internal Revenue; and,

4. Whether the assessment has attained finality by operation of law.

In sum, the principal issue is whether the assessment on petitioner for alleged deficiency tax in the amount of ₱10,355,306.68 for taxable year 2010, should be declared null and void.

Petitioner primarily argues that up to the present time, the CIR has yet to act on his Formal Protest[58] dated September 30, 2013. By not making any ruling, affirmative or otherwise, respondents' deficiency tax assessments against him has not yet therefore attained finality. Petitioner cites the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[59] ("*Lascona case*" for brevity) to bolster its argument. More so, petitioner also points out that respondents failed to rebut the consistent claim of petitioner that he has not received, either personally or through his authorized representative, the Letter of Authority (LOA), Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), Final Letter of Demand (FLD), Tax Verification Notice (TVN), Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS), and Warrant of Garnishment. Petitioner cites the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[60] in this aspect.

On the other hand, respondents insist that this Court has no jurisdiction to entertain the present case since the disputed assessment had already become final, executory and demandable. He continues that under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as

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[58] *Supra* No. 14.
[59] G.R. No. 171251, March 5, 2012.
[60] G.R. No. 185371, December 8, 2010.

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amended, in relation to RR No. 12-99, as amended, a taxpayer has thirty (30) days from receipt of a FLD within which to protest the assessment. However, in the instant case, petitioner received respondent Revenue District Officer's Letter dated June 26, 2013 on July 1, 2013, informing petitioner that his Formal Protest dated February 9, 2013 was denied for lack of legal and factual bases. Thus, petitioner has thirty (30) days or until July 31, 2013 within which to file a reconsideration with the CIR; however, it was only on September 30, 2013 that he filed his request to the CIR. By doing so, petitioner belatedly filed his request by sixty (60) days thereby making the deficiency assessments final and executory.

Also, respondents claim that the instant Petition failed to conform to Rules regarding proper appeal. By first resorting to the lower court, petitioner availed a wrong mode of appeal which is fatal to its cause thereby rendering the subject assessments final, executory, and demandable.

After due consideration of the arguments and evidence presented by the parties, this Court finds no merit in the instant Petition.

This Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.

Section 7(a) of Republic Act (RA) No. 1125[61], as further amended by RA No. 9282[62], enumerates the instances where the CTA may exercise its appellate jurisdiction, *viz.*:

> "**Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[61] "An Act Creating the Court of Tax Appeals".

[62] "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And For Other Purposes."

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(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;

(2) **Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

x x x." *(Emphases Supplied)*

Evidently, it is the CIR's decision or inaction involving disputed assessments that is cognizable by this Court. The rule is that for this Court to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to this Court.[63]

Moreover, it has been interpreted that a "disputed assessment" arises where a taxpayer questions an assessment and asks for reconsideration or cancellation of the same.[64] It is precisely for this reason that, Section 228 of the NIRC of 1997, as amended, provides the manner upon which a taxpayer may question and appeal any deficiency tax assessment issued against it, *viz.*:

"**SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds

[63] Light Rail Transit Authority vs. Bureau of Internal Revenue represented by the Commissioner of Internal Revenue, CTA EB No. 1325 (CTA Case No. 8891), October 5, 2016.
[64] *Ibid.*

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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:

x x x

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." *(Emphases Supplied)*

Apparently, Section 228 of the NIRC of 1997, as amended, refers to the implementing rules and regulations on the period, form, and manner of protesting an assessment for it to be considered a disputed one. Apropos, Revenue Regulations (RR) No. 12-99 [65], as amended,

[65] "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", September 6, 1999.

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specifically Section 3.1.5, provides the period, form, and manner of a disputed assessment, *viz.*:

> "**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. x x x
>
> x x x
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: **Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner**.
>
> x x x." *(Emphasis Supplied)*

Apparently, upon receipt of the CIR's final decision on the disputed assessment, the taxpayer can file a petition for review with this Court within thirty (30) days after receipt of a copy of such decision. However, if the final decision was only rendered by the CIR's duly authorized representative, the taxpayer is given the option of whether (1) to elevate his protest to the CIR upon receipt of denial of protest by the authorized representative, or (2) to directly appeal such denial to the Court of Tax Appeals, again, both within thirty (30) days from receipt of the denial of the protest.

Applying the foregoing guidelines in the present case, petitioner received a Letter dated June 26, 2013 from respondent Revenue District Officer on July 1, 2013, informing him that his Formal Protest dated February 9, 2013 was denied for lack of legal and factual bases.

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Thereafter, on October 22, 2013, petitioner decided to elevate the denial of his protest by filing a Formal Protest dated September 30, 2013 to then CIR Kim S. Jacinto-Henares. Since petitioner's decision of appealing to the CIR is clearly within his right and solely within his prerogative, petitioner should have been wary that such option does not go unrestricted. There is a period to be observed within which the law allows for this remedy. Unfortunately in this case, petitioner's appeal was made beyond the said period of thirty (30) days as mandated by RR No. 12-99, as amended.

For easy reference, a table of the antecedent material events and the application of the preceding periods in the instant case, is shown herein below:

DATE	SIGNIFICANT EVENT
September 8, 2011	petitioner received a LOA No. 008-2011-0000010[66] dated September 7, 2011
September 4, 2012	petitioner received a NIC[67] dated August 30, 2012
October 18, 2012	PAN[68] was issued by respondent Regional Director
January 4, 2013	FLD[69] was issued by respondent Regional Director
February 11, 2013	Petitioner filed a Formal Protest[70] letter dated February 9, 2013 addressed to respondent Regional Director
April 8, 2013	petitioner received TVN No. 2003-00152858[71] dated March 14, 2013
July 1, 2013	petitioner received a Letter[72] dated June 26, 2013 from respondent Revenue District Officer informing him that his Formal Protest dated February 9, 2013 has been denied
July 31, 2013	**End of 30 days within which to elevate his protest to the CIR**

[66] *Supra* No. 4.
[67] *Supra* No. 5.
[68] *Supra* No. 6.
[69] *Supra* No. 8.
[70] *Supra* No. 9.
[71] *Supra* No. 10.
[72] *Supra* No. 13.

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October 22, 2013	petitioner filed a Formal Protest[73] dated September 30, 2013 to then CIR Kim S. Jacinto-Henares
July 20, 2016	petitioner filed with the CTA the instant Petition[74] with Prohibition and Injunction

Perforce, by invoking the power of the CIR to review the acts of his subordinates by appealing the decision of respondent Revenue District Officer, the decision of the latter cannot be considered as the final decision on petitioner's protest as contemplated by Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.5 of RR No. 12-99, as amended.

In this regard, petitioner relies heavily in the *Lascona case* wherein the Supreme Court had the occasion to rule that in case of inaction by the CIR on the protested assessment, – the taxpayer has two options, either: (1) file a petition for review with the CTA within thirty (30) days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision. These options are mutually exclusive and resorting to one bars the application of the other. The Supreme Court further emphasized that, a taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment.

However, the peculiar circumstances that transpired in the present case, negates the application of the doctrine enunciated in the *Lascona case*.

In the *Lascona case*, the CIR issued an assessment notice on March 27, 1998. Subsequently, Lascona protested the assessment on April 20, 1998 which is clearly within the thirty (30) days provided under Sec. 228 of the NIRC of 1997, as amended. Nearly a year after, the CIR rendered a decision *via* a letter dated March 3, 1999 which was sent to

[73] *Supra* No. 14.
[74] *Supra* No. 24.

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Lascona denying its protest. Thus, on April 12, 1999, Lascona appealed to this Court.

Going back to the instant case, such is not the scenario here. Petitioner should have elevated his protest with the CIR within thirty (30) days from receipt of the final decision of the Revenue District Officer. Instead, it took him eighty-two (82) days after receipt of the final decision to file an appeal with the CIR. Had petitioner really intended to await the decision of the CIR, petitioner, on numerous occasions, should have been prompted to act, by appealing to this Court, after being given notice of the BIR's intention to collect the deficiency tax against him, such as, to wit: the Letter dated December 16, 2013 by respondent Regional Director informing him that the tax deficiency assessment against him had become final and executory; the PCL dated August 28, 2014; the Second Notice dated March 2, 2015; and, finally, the FNBS dated May 19, 2015.

All of the foregoing notices are lost opportunities within which petitioner could have elevated his case to this Court *via* judicial appeal. Nonetheless, he opted to file on May 27, 2015 a petition for Prohibition and Injunction with Preliminary Injunction/TRO[75] with the RTC Branch No. 3 of Baguio City. Clearly, this is a wrong mode of appeal.

It has been a long standing principle of this Court that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. In the instant case, petitioner cannot claim that he cannot be prejudiced if he chooses to wait for the final decision of the CIR on his protest. The act of filing a petition with the Regional Trial Court of Baguio City contradicts his claim of awaiting the final decision of the CIR. Again, it only shows that petitioner erroneously resorted to a wrong mode of appeal.

Verily, while RR No. 12-99, as amended, allows that the final decision of the CIR's duly authorized representative may be appealed to the CIR, such must be done within the

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[75] *Supra* No. 19.

prescribed period provided for. Clearly, the elevation of the protest with the CIR by petitioner was filed out of the 30-day period.

Accordingly, in view of the finding that respondent's deficiency assessments had already became final, demandable and executory, this Court is deprived of jurisdiction to rule on the fallibility, much less the substantive validity, of the subject assessments. Further, this Court need not anymore belabor on the other issues raised herein considering that they are rendered moot.

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

I concur:

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

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
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice