REPUBLIC OF THE PHILIPPINES
COURT OF TEAX APPEALS
QUEZON CITY

SECOND DIVISION

CATHERINE T. LOH/ARYSTA MARKETING, Petitioner,	**CTA CASE NO. 9934**
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson,* **BACORRO-VILLENA**, *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 15 2021 11:20 a.m.

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DECISION

CASTAÑEDA, JR., J:

The instant Petition for Review filed on September 24, 2018, prays that the Final Decision dated August 14, 2018 of respondent, holding petitioner liable for alleged deficiency income tax and value-added tax (VAT) amounting to ₱19,196,937.60, for taxable year 2010, be reversed and set aside.[1]

THE PARTIES

Petitioner Catherine Loh is of legal age, married, Filipino citizen, and with postal address at 1015 4th Floor Krisambet Building, Roxas St., Singalong, Malate, Manila, and the proprietor of Arysta Marketing for taxable year 2010.[2]

[1] Summary of the Case, *Pre-Trial Order* dated August 27, 2019, Docket, p. 287.
[2] Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 281.

Respondent Commissioner of Internal Revenue is a government agency with postal address at BIR Road, Diliman, Quezon City.[3]

THE FACTS

On August 19, 2011, petitioner received the *Letter of Authority* No. LOA-034-2011-00000266 (SN: eLA201000045591) dated August 16, 2011.[4]

Thereafter, on October 7, 2013, petitioner received the BIR's *Notice of Informal Conference*.[5]

Subsequently, respondent issued the *Preliminary Assessment Notice* dated December 23, 2013 against petitioner,[6] informing petitioner of the findings of the BIR after its investigation.

On January 30, 2014, petitioner received respondent's *Formal Letter of Demand* (FLD) dated January 24, 2014,[7] finding the former with the following deficiency taxes: (1) income tax in the amount of ₱11,577,367.61; (2) VAT amounting to ₱4,522,152.06; and (3) compromise penalty amounting to ₱132,000.00.[8] The BIR also issued against petitioner the corresponding *Assessment Notices* for the said deficiency income tax and VAT.[9]

Thereafter, respondent, through Regional Director Araceli L. Francisco, issued the *Final Decision on Disputed Assessment* dated June 30, 2015, thereby reducing the deficiency basic income tax due, but maintaining the deficiency VAT assessment and compromise penalty. *Je*

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[3] Par. 2, Joint Stipulation of Facts, JSFI, p. 281.
[4] Exhibit "R-1", Docket, p. 266.
[5] Exhibits "R-7", "R-7-a", "R-7-b", Docket, pp. 272 to 274.
[6] Exhibit "R-8", Docket, pp. 275 to 277.
[7] Exhibits "R-9-b", "R-9-b-1", "R-9-c", "R-9-d", and "R-9-e", Docket, pp. 328 to 333.
[8] Par. 7, *Petition for Review* vis-à-vis Par. 5, *Answer*, Docket, pp. 11 and 68, respectively.
[9] Exhibits "R-9" and "R-9-a", Docket, pp. 326 to 327.

Petitioner then received a copy of respondent's *Final Decision* dated August 14, 2018, denying the former's motion for reconsideration.[10]

Petitioner filed the present *Petition for Review with Motion to Suspend Collection of Taxes* on September 24, 2018.[11]

On November 5, 2018, respondent filed his *Answer*,[12] interposing certain special and affirmative defenses, such as the following: (1) the Court has no jurisdiction to entertain the instant *Petition for Review*; (2) petitioner has thirty (30) days after receipt of a copy of the decision to file a petition for review before this Court; (3) in paragraphs 3 and 11 of the *Petition for Review*, petitioner admitted that on August 22, 2018, she received a copy of respondent's *Final Decision* dated August 14, 2018, denying her motion for reconsideration; (4) contrary to what petitioner claims under paragraph 4 of her *Petition*, the last day to file a petition for review is on September 21, 2018; (5) considering that the *Petition for Review* was filed only on September 24, 2018, the same was filed out of time; and (6) the subject assessment has already attained finality.

The pre-trial conference was initially set on December 6, 2018.[13]

Respondent submitted the *BIR Records* of this case on November 20, 2018.[14]

During the hearing held on November 21, 2018 for the *Motion for Suspension of Collection of Taxes* of petitioner,[15] the latter presented Ms. Loreinne Bangloy,[16] her Compliance Officer. Thereafter, on December 4, 2018, petitioner filed her *Memorandum*

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[10] Par. 3, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 10 and 68, respectively; Par. 11, *Petition for Review* vis-à-vis Par. 9, *Answer*, Docket, pp. 11 and 69, respectively. Cf: Resolution dated May 16, 2019, Docket, pp. 225 to 233.

[11] Docket, pp. 10 to 15.

[12] Docket, pp. 68 to 72.

[13] *Notice of Pre-Trial Conference* dated November 6, 2018, Docket, pp. 73 to 74.

[14] *Compliance* dated November 20, 2018, Docket, pp. 89 to 90.

[15] Minutes of the hearing held on, and Order dated, November 21, 2018, Docket, pp. 88 and 91, respectively.

[16] Exhibit "P-9", Docket, pp. 77 to 87.

(Re: Petitioner's Motion to Suspend Collection of Taxes). [17] Respondent, however, failed to file his memorandum.[18]

In the meantime, *Respondent's Pre-Trial Brief* and petitioner's *Pre-Trial Brief* were separately filed on December 3, 2018.[19]

In the Resolution dated January 15, 2019, [20] the Court dismissed the instant *Petition for Review* for lack of jurisdiction, as the same was filed beyond the 30-day reglementary period.

Petitioner then filed a *Motion for Reconsideration* on February 27, 2019,[21] alleging that there was a typographical error on the date of receipt of respondent's final decision, in that the date of receipt should have been August 23, 2018, instead of August 22, 2018. Relative thereto, petitioner submitted a copy of her *Letter Petition Notice* dated September 3, 2018 allegedly filed with the BIR on September 7, 2018,[22] wherein it is indicated that its date of receipt of the *Final Decision* dated August 14, 2018 of respondent is on August 24, 2018.

Respondent then filed his *Comment (To Petitioner's Motion for Reconsideration on the Resolution dated January 15, 2019)* on March 18, 2019,[23] maintaining that the instant *Petition for Review* was filed out of time.

In the Resolution dated May 16, 2019,[24] the Court recalled and set aside the Resolution dated January 15, 2019, and granted petitioner's *Motion for Suspension of Collection of Taxes*, thereby suspending the collection of the deficiency taxes, subject to the posting of a cash or surety bond.

[17] Docket, pp. 188 to 197.
[18] Records Verification dated December 17, 2018 issued by the Judicial Records Division of this Court, Docket, p. 200.
[19] Docket, pp. 177 to 181, and 182 to 187, respectively.
[20] Docket, pp. 202 to 207.
[21] Docket, pp. 208 to 209.
[22] *Compliance* dated March 18, 2019, Docket, pp. 214 to 218.
[23] Docket, pp. 220 to 222.
[24] Docket, pp. 225 to 233.

The case was then set anew for pre-trial conference on June 6, 2019.[25] However, at the scheduled pre-trial conference, considering that both counsels are willing to refer this case for mediation, the parties were referred to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).[26] Nevertheless, the parties decided not to mediate,[27] and thus, the pre-trial conference was set anew, and was held, on August 1, 2019.[28]

On August 20, 2019, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[29] Thereafter, the Pre-Trial Order dated August 27, 2019 was issued,[30] approving and adopting the said JSFI, and deeming the termination of the pre-trial.

Trial for the main case then ensued.

At the hearing held on September 4, 2019, petitioner's counsel manifested that he will no longer present the first and second witnesses for petitioner, and will just adopt the testimony of Ms. Bangloy in the *Motion for Suspension of Collection of Taxes*.[31]

Also, at the hearing held on September 12, 2019, presented Mr. Franklin R. Casedo for commissioning as an Independent Certified Public Accountant (ICPA). Finding merit thereon and without any objection interposed by respondent, the Court granted petitioner's *Motion to Commission* Mr. Casedo. The Court then granted the latter a period of thirty (30) days within which to file his ICPA Report; and set the continuation of petitioner's presentation of evidence on October 21, 2019 for the testimony of Mr. Casedo.[32]

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[25] *Notice of Pre-Trial Conference* dated May 20, 2019, Docket, p. 234 to 236; Resolution dated June 6, 2019, Docket, p. 241; Minutes of the hearing held on, and Order dated, June 6, 2019, Docket, pp. 242 to 243.

[26] Resolution dated June 6, 2019, Docket, p. 241; Minutes of the hearing held on, and Order dated, June 6, 2019, Docket, pp. 242 to 243.

[27] *No Agreement to Mediate* dated July 1, 2019, Docket, p. 244.

[28] Order dated July 3, 2019, Docket, p. 247; Minutes of the hearing held on, and Order dated, August 1, 2019, Docket, pp. 250 to 251.

[29] Docket, pp. 281 to 285.

[30] Docket, pp. 287 to 291.

[31] Minutes of the hearing held on, and Order dated, September 4, 2019, Docket, pp. 292 to 293.

[32] Minutes of the hearing held on, and Order dated, September 12, 2019, Docket, pp. 303 to 304.

On October 16, 2019, petitioner filed its *Motion for Extension of Time To File Independent Certified Public Accountant (ICPA) Report.*[33] However, at the hearing held on October 21, 2019, the said *Motion for Extension of Time* was denied by the Court. In the same hearing, the Court decreed that petitioner's presentation of further evidence is deemed waived, considering that petitioner's counsel failed to appear in the said hearing. The Court, nonetheless, granted petitioner a period of five (5) days within which to file a *Formal Offer of Evidence* (FOE).[34] Petitioner, however, failed to file her FOE.[35] During the hearing held on December 2, 2019, respondent's motion that petitioner's right to file an FOE be deemed waived was granted by the Court, considering that petitioner failed to file the same.[36]

For his part, respondent presented his documentary and testimonial evidence. He proffered the testimonies of the following Revenue Officers, namely: (1) Mr. Ronnie Roel Y. Bolledo;[37] (2) Mr. Daniel R. Llavor;[38] and (3) Ms. Marynol B. Pineda.[39]

On February 3, 2020, *Respondent's Formal Offer of Evidence* was filed.[40] Petitioner failed to file her comment thereon.[41] Thus, in the Resolution dated June 8, 2020,[42] the Court admitted all of respondent's exhibits, and granted the parties file their respective memorandum, within thirty (30) days from receipt thereof.

Petitioner filed her *Memorandum* on July 10, 2020.[43] Respondent, however, failed to file his memorandum.[44]

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[33] Docket, pp. 306 to 308.
[34] Minutes of the hearing held on, and Order dated, October 21, 2019, Docket, pp. 310 to 311.
[35] Records Verification dated November 28, 2019 issued by the Judicial Records Division of this Court, Docket, p. 317.
[36] Minutes of the hearing held on, and Order dated, December 2, 2019, Docket, pp. 318 to 319.
[37] Exhibit "R-16", Docket, pp. 260 to 265; Minutes of the hearing held on, and Order dated, December 2, 2019, Docket, pp. 318 to 319.
[38] Exhibit "R-17", Docket, pp. 322 to 325; Minutes of the hearing held on, and Order dated, January 20, 2020, Docket, pp. 351 to 353.
[39] Exhibit "R-18", Docket, pp. 337 to 341; Minutes of the hearing held on, and Order dated, January 20, 2020, Docket, pp. 351 to 353.
[40] Docket, pp. 357 to 364.
[41] Records Verification dated February 21, 2020 issued by the Judicial Records Division of this Court, Docket, p. 366.
[42] Docket, pp. 377 to 378.
[43] Docket, pp. 367 to 375.

In the Resolution dated September 7, 2020, [45] the Court considered the instant case submitted for decision. However, on September 21, 2020, respondent filed his *Motion for Leave to Admit Attached Memorandum*, attaching therewith his *Memorandum.* [46] Thus, in the Resolution dated November 6, 2020,[47] the Court granted the respondent's *Motion for Leave*, and submitted anew for decision the instant case.

THE ISSUE

The lone issue for this Court's resolution is the following:

Whether or not Petitioner is liable for deficiency income tax and VAT in the amount of Php 19,196,937.60 for taxable year 2010.[48]

THE COURT'S RULING

The instant *Petition for Review* must be dismissed for lack of jurisdiction of this Court.

Petitioner argues that respondent did not issue a FAN but only an FLD, which was, however, improperly served, as there was no attempt to serve it personally to petitioner; that the summary list of creditable withholding taxes cannot prove undeclared sales; and that the alleged disallowed/unsupported expenses were already substantiated by petitioner.

Respondent, on the other hand, contends that this Court has no jurisdiction over the instant *Petition*; that the assessment has already become final, executory and demandable; that while maintaining that the subject deficiency tax assessments is already beyond the scope of judicial review, the same has factual and legal

[44] Records Verification dated July 22, 2020 issued by the Judicial Records Division of this Court, Docket, p. 379.
[45] Docket, p. 380.
[46] Docket, pp. to .
[47] Docket, pp. 367 to 375.
[48] Joint Statement of Issues to be Tried or Resolved, JSFI, Docket, p. 282.

bases; and that tax assessments by tax examiners are presumed correct and made in good faith.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and 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 or nature of an action. 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. 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.[49]

The issue of jurisdiction has initially been addressed by this Court, in the Resolution dated January 15, 2019,[50] as follows:

> "Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, specifies the reglementary period within which an appeal may be prosecuted. Said provision provides:
>
> > 'Sec. 228. Protesting of Assessment. – x x x
> >
> > xxx xxx xxx
> >
> > 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 one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**.' *(Emphases supplied)*

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[49] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014.

[50] Docket, pp. 202 to 207.

It is clear from the foregoing that a taxpayer adversely affected by the decision, relative to a protest against an assessment, may file an appeal before this Court within 30 days from receipt of decision; otherwise, the decision shall become final, executory and demandable.

In relation thereto, the period for filing an appeal before this Court is provided under Section 11 of the Republic Act No. 1125, as amended, the portion of which states:

> 'Section 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 of 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.' (*Emphasis supplied*)

Likewise, Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals reads:

> 'SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within** ✓

> **thirty days after receipt of a copy of such decision** or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.' *(Emphasis supplied)*

In this case, petitioner's witness, Ms. Bangloy, testified, by way of Judicial Affidavit, that the Final Decision on Disputed Assessment dated June 30, 2015, denying its Motion for Reconsideration dated July 30, 2015, was received by petitioner on August 22, 2018.

Applying Section 228 of the 1997 NIRC, as amended, and RA No. 1125, as amended, petitioner had only 30 days, or until September 21, 2018 to appeal such final decision of the respondent to this Court. However, petitioner filed its Petition for Review before this Court only on September 24, 2014; hence, the same was filed out of time. Consequently, the subject assessment has already attained finality at the time petitioner elevated its case before this Court.

In the light of the above facts, this Court has no recourse but to dismiss the instant Petition on the ground that the appeal was filed beyond the reglementary 30-day period provided by law. It follows that it is also devoid of authority to act on its Motion to Suspend Collection of Taxes.

WHEREFORE, premises considered, the **Petition for Review with Motion to Suspend Collection of Taxes** filed by petitioner on September 24, 2018 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED." ℊ

As a reaction to the foregoing ruling, petitioner filed a *Motion for Reconsideration* on February 27, 2019,[51] alleging that there was a typographical error on the date of receipt of respondent's final decision, in that the date of receipt should have been August 23, 2018, instead of August 22, 2018. To recall, respondent filed his *Comment (To Petitioner's Motion for Reconsideration on the Resolution dated January 15, 2019)* on March 18, 2019,[52] maintaining that the instant *Petition for Review* was filed out of time.

In the Resolution dated May 16, 2019,[53] this Court then ruled as follows:

> "With respect to the subject Motion for Reconsideration, the Court finds the same meritorious.
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> In the case of *Belle Corporation vs. De Leon-Banks*,[54] the Supreme Court emphasized the importance of a full-blown trial on the merits where the ground invoked in the motion to dismiss is not indubitable, the pertinent portion of which reads:
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> > 'xxx. As jurisprudence holds, so rigid is the norm prescribed that **if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.** This dictum is in line with the policy that motions to dismiss should not be lightly granted where the ground invoked is not indubitable, as in the present case. In such a situation, the objections to the complaint must be embodied in the answer as denials or special and affirmative defenses and threshed out in a full-blown trial on the merits.' (*Emphasis supplied.*)
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> Considering the parties' opposing claims as to the date of the actual receipt of the subject Final Decision by

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[51] Docket, pp. 208 to 209.
[52] Docket, pp. 220 to 222.
[53] Docket, pp. 225 to 233.
[54] G.R. No. 174669, September 19, 2012.

> petitioner, it is logical and proper to resolve this issue after having a full-blown trial so that both parties can substantiate their respective claims.
>
> Thus, the Court deems it proper to **GRANT** the instant Motion for Reconsideration in order to allow the parties to prove their factual claims; to **RECALL** and **SET ASIDE** the assailed Resolution promulgated on January 15, 2019; and to **PROCEED** with the resolution of petitioner's Motion to Suspend Collection."

Thus, since the Resolution dated January 15, 2019 has been recalled and set aside, this Court has not actually and finally decided on the issue of jurisdiction. Rather, it allowed a full-blown trial so that both parties can substantiate their respective claims. Correspondingly, the issue of whether this Court has jurisdiction to entertain the present *Petition for Review* is now ripe for determination.

Unfortunately, however, for petitioner, she failed to substantiate her claim that the date of receipt of respondent's *Final Decision* dated August 14, 2018 was indeed August 23, 2018, as she later alleged, instead of August 22, 2018.

It must be recalled that petitioner, in the instant *Petition for Review*, was twice explicit that the such date of receipt is **August 22, 2018**, to wit:

> "3. **On 22 August 2018**, Petitioner received a copy of Respondent's final decision dated 14 August 2018 denying the former's motion of reconsideration.
>
> xxx xxx xxx
>
> 11. **On 22 August 2018**, Petitioner received a copy of Respondent's final decision dated 14 August 2018 denying the former's motion for reconsideration. xxx."[55] *(Emphases added)*

[55] Docket, pp. 10, and 11 to 12.

Parenthetically, it is noteworthy that the foregoing allegations were admitted by respondent in his *Answer* as well.[56]

In *Gonzales-Saldana vs. Spouses Niamatali,*[57] the Supreme Court said:

> **"A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. <u>It may contradicted only by showing that it was made through palpable mistake or that no such admission was made</u>.**
>
> A party who judicially admits a fact cannot later challenge [the] fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, **an admission made in the pleadings cannot be controverted by the party making such admission and** xxx **is conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary to or inconsistent with what was pleaded."** *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that an admission made in the pleadings cannot be controverted by the party making such admission and is conclusive as to such party; and that the same party cannot subsequently take a position contrary to or inconsistent with what was pleaded. If at all, the same admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

The allegation made by petitioner in the above-quoted paragraphs 3 and 11 of the instant *Petition for Review*, stating that

[56] Pars. 1 and 9, respondent's *Answer*, Docket, pp. 68 and 69, respectively.
[57] G.R. No. 226587, November 21, 2018.

the date of receipt by petitioner of respondent's *Final Decision* dated August 14, 2018, is a judicial admission and are thus conclusive to petitioner. Such being the case, the latter cannot subsequently take a position contrary to or inconsistent with what was pleaded.

Furthermore, it is noteworthy that petitioner's own witness, Ms. Loreinne Bangloy, testified to the effect that petitioner received the respondent's *Final Decision* dated August 14, 2018 **on August 22, 2018**, to wit:

> "*Q20 : I am showing to you a document purporting to be a Final Decision on Disputed Assessment (FDDA) dated 30 June 2015, what is the relation of this document to the one you mentioned?*
> A20 : It is the same, ma'am.
>
> Counsel: Your honor may we request that the Final Decision of Disputed Assessment dated 30 June, identified by the witness be marked as Exhibit 'P-4'.
>
> Q21 : What happened next after the issuance of the FDDA?
> A21 : We filed a *Motion for Reconsideration* dated 30 July 2015 contesting the findings of a tax deficiency of Php 19,196,937.60, but to no avail. **Ultimately, <u>on 22 August 2018</u>, we received a copy of the Respondent's Final Decision dated 14 August 2018 denying our Motion for Reconsideration."** [58] *(Emphasis and underscoring added)*

Thus, the fact that petitioner received respondent's *Final Decision* dated August 14, 2018 **on August 22, 2018**, was established in this case not only because the same is judicially admitted by petitioner in the instant *Petition for Review*, it is also based on the proffered testimonial evidence of petitioner.

This Court is not convinced that what was indicated in the instant *Petition for Review "was merely a typographical error and the date should have been 23 August 2018."*[59] This is so because petitioner has not offered any evidence to show that the subject

[58] Exhibit "P-9", Docket, at p. 81.
[59] Par. 2, petitioner's *Motion for Reconsideration*, Docket, at p. 208.

allegation was indeed a mere typographical error. The basic rule is that mere allegation is not evidence and is not equivalent to proof. [60]

This Court cannot consider the copy of petitioner's *Letter Petition Notice* dated September 3, 2018 allegedly filed with the BIR on September 7, 2018[61] attached to the *Compliance* dated March 18, 2019 filed on March 21, 2019,[62] simply because the same was not formally offered in evidence. *Apropos*, courts cannot consider evidence which has not been formally offered.[63] Neither is the said copy of the petitioner's *Letter Petition Notice* dated September 3, 2018 identified by testimony duly recorded; nor did any person, who has personal knowledge of such document, sufficiently described the contents thereof, to justify this Court to consider the same. To stress, the said document was simply attached to the said *Compliance* dated March 18, 2019, and nothing more.

In any event, even when this Court may be compelled to consider the said copy of the *Letter Petition Notice* dated September 3, 2018, no probative value may be attributed thereto. It must be emphasized, in this connection, that admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[64]

This Court doubts the contents of the said *Letter Petition Notice* dated September 3, 2018, since the filing thereof was not the proper remedy to question a final decision of respondent. There is no explanation why petitioner had to file the same before the latter, if it was, in fact, done. More importantly, there was no explanation, at all, why a different date was judicially admitted in the instant *Petition for Review*, and why petitioner's own witness affirmed what is indicated therein. To be sure, the copy of the petitioner's *Letter*

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[60] *Agdeppa vs. Office of the Ombudsman*, G.R. No. 146376, April 23, 2014.
[61] Docket, pp. 216 to 218.
[62] Docket, pp. 214 to 215.
[63] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[64] *Magsino vs. Magsino*, G.R. No. 205333, February 18, 2019.

Petition Notice dated September 3, 2018 did not prove the issue of jurisdiction, at all. Rather, it invited more questions, than answers.

Furthermore, it is likewise noteworthy that petitioner undertook, in her *Motion for Reconsideration* filed on February 27, 2019,[65] to provide this Court with a certification from the post office to prove that August 23, 2018 is her date of receipt of respondent's *Final Decision* dated August 14, 2018. However, in her *Compliance* dated March 18, 2019 filed on March 21, 2019,[66] petitioner alleges that she *"has yet to find the envelope containing said final decision."* Since during the trial, petitioner was not able to submit such certification from the post office, it is safe to conclude that the said envelope has not been found by petitioner, if indeed it existed at all.

There is, thus, no convincing proof that petitioner's date of receipt of respondent's *Final Decision* dated August 14, 2018 is August 23, 2018.

Such being the case, the judicial admission that **petitioner's date of receipt is August 22, 2018** of the said *Final Decision* stands, since the said admission was not shown to have been made through palpable mistake, and because such admission was in fact made.

Correspondingly, counting thirty (30) days from August 22, 2018, petitioner had until **September 21, 2018**, within which to file her *Petition for Review* of respondent's *Final Decision* dated August 14, 2018. Considering that the instant *Petition for Review* was filed only **on September 24, 2018**, the same was filed out of time. In other words, the 30-day period to appeal had already lapsed when the said *Petition for Review* was filed. Consequently, the subject assessment had become final and executory when petitioner elevated its case before this Court. Hence, the instant *Petition for Review* must perforce be dismissed, for this Court's lack of jurisdiction.

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED**.

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[65] Par. 3, petitioner's *Motion for Reconsideration*, Docket, p. 208.
[66] Par. 2, petitioner's *Compliance* dated March 18, 2019, Docket, p. 214.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.
Associate Justice
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.

ROMAN G. DEL ROSARIO
Presiding Justice