REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2039** (CTA Case No. 8992)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
GRAND PLAZA HOTEL CORPORATION, Respondent.	Promulgated: SEP 29 2020 3:50 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Amended Decision[1] dated October 29, 2018 ("Assailed Amended Decision") and Resolution[2] dated March 11, 2019 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), cancelling the assessments issued by Petitioner against Respondent for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and documentary stamp tax (DST) for taxable year 2008 in the total amount of Php508,101,387.12. Petitioner also prays that this Court

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1 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Catherine T. Manahan concurring; Docket, pp. 946-956.

2 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Catherine T. Manahan concurring; *Id.*, pp. 983-987.

reinstate the original Decision[3] dated July 04, 2018, which dismissed the petition filed in CTA Case No. 8992 for lack of jurisdiction.

The dispositive portion of the Assailed Amended Decision reads:

> "**WHEREFORE**, premises considered, [Respondent's] **Motion for Reconsideration (of the Decision dated 4 July 2018)**, is **GRANTED**.
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> Accordingly, the dispositive portion of this Court's Decision dated July 4, 2018, is hereby amended to read as follows:
>
> > '**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment issued by [Petitioner] against [Respondent] for deficiency income tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and value-added tax, in the total amount of [Php]508,101,387.12 for taxable year 2008, are **CANCELLED** and **SET ASIDE**.
> >
> > **SO ORDERED**.'
>
> **SO ORDERED.**"[4]

Meanwhile, the dispositive portion of the Assailed Resolution reads:

> "**WHEREFORE**, premises considered, [Petitioner's] **Motion for Reconsideration Re: Amended Decision dated 29 October 2018** is **DENIED** for lack of merit.
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> **SO ORDERED.**"[5]

The Parties

Petitioner, is the duly appointed head of the Bureau of Internal Revenue ("BIR"), the government agency in charge of the assessment and collection of

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[3] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Catherine T. Manahan concurring; *Id.*, pp. 898-922.
[4] *Id.*, Decision, p. 955.
[5] *Id.*, Resolution dated March 11, 2019, p. 987.

all internal revenue taxes, fees and charges. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

On the other hand, Respondent Grand Plaza Hotel Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 10th Floor, The Heritage Hotel Manila, EDSA corner Roxas Boulevard, Pasay City. It is engaged in the business of owning, operating, leasing, and managing hotels in the Philippines. Petitioner owns and operates the Heritage Hotel on Roxas Boulevard, Pasay City.[7]

The Facts

The facts as found by the Second Division are as follows:

> "Letter of Authority (LOA) No. 2008 0003374 dated July 1, 2009 was issued to authorize certain Revenue Officers to examine the books of accounts of [Respondent] for taxable year 2008. Meanwhile, [Respondent] executed several Waivers of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code (NIRC) to extend the period to assess.
>
> On July 18, 2013, [Respondent] received the Preliminary Assessment Notice (PAN) informing [Respondent] that [Petitioner] has found a tax deficiency in the total amount of [Php]500,106,960.18, inclusive of interest, for taxable year 2008, broken down as follows:

	TAX DEFICIENCY	20% INTEREST	TOTAL AMOUNT
Income Tax	[Php]175,931,100.38	145,083,341.24	321,014,441.61
Withholding Tax on Compensation	17,900,584.89	18,903,017.64	36,803,602.53
Expanded Withholding Tax	628,020.31	663,189.44	1,291,209.75
Documentary Stamp Tax	363,921.74	384,665.28	748,587.02
Value-Added Tax	67,753,197.71	72,495,921.55	140,249,119.27
TOTAL	**[Php]262,576,825.03**	**[Php]237,530,135.15**	**[Php]500,106,960.18**

6 *Id*, Decision, p. 899.
7 *Id*.

[Respondent] received a Formal Letter of Demand (FLD) with its corresponding Audit Result/Assessment Notices on September 19, 2013. The principal amounts assessed under the PAN are the same as that in the FLD, except for the amounts of interest which have increased, to wit:

	TAX DEFICIENCY	20% INTEREST	TOTAL AMOUNT
Income Tax	[Php]175,931,100.38	153,411,919.53	329,343,019.90
Withholding Tax on Compensation	17,900,584.89	19,493,736.95	37,394,321.84
Expanded Withholding Tax	628,020.31	684,542.13	1,312,562.44
Documentary Stamp Tax	363,921.74	396,674.70	760,596.44
Value-Added Tax	67,753,197.71	74,528,517.49	142,281,715.20
TOTAL	**[Php]262,576,825.03**	**[Php]248,515,390.80**	**[Php]511,092,215.83**

On November 21, 2013, [Respondent] wrote a letter to [Petitioner] informing the latter that, as a sign of good will, it made a partial payment of [Php]2,073,158.88 inclusive of the twenty percent (20%) interest based on the FLD for the following items:

		DATE PAID	FILING REF. NO.
Expanded Withholding Tax	[Php]1,312,562.44	November 21, 2013	2913000008099000
Documentary Stamp Tax	760,596.44	November 21, 2013	2913000008099105
TOTAL	[Php]2,073,158.88		

On December 17, 2013, [Respondent] then received a Collection Letter dated December 4, 2013, for [Php]508,101,387.12, inclusive of surcharges and interest, broken down as follows:

	TAX DEFICIENCY	SURCHARGE	INTEREST	TOTAL AMOUNT
Income Tax	[Php]175,931,100.38	0.00	150,421,090.82	326,352,191.20
Withholding Tax on Compensation	17,900,584.89	0.00	19,493,736.95	37,394,321.84
Expanded Withholding Tax	628,020.31	0.00	684,542.13	1,312,562.44
Documentary Stamp Tax	363,921.74	0.00	396,674.70	760,596.44

Value-Added Tax	67,753,197.71	0.00	74,528,517.49	142,281,715.20
TOTAL	**[Php]262,576,825.03**	**0.00**	**[Php]245,524,562.09**	**[Php]508,101,387.12**

[Respondent] subsequently wrote a letter on December 20, 2013 to [Petitioner], stating that [Respondent] was informed by Revenue Officer Atty. Carolyn V. Mendoza to pay only those assessments that it does not raise any objection to. [Respondent] also mentioned that it does not agree with the assessment of the BIR regarding Income Tax, Withholding Tax on Compensation, and Value-Added Tax.

On December 27, 2013, [Respondent] again wrote a letter to [Petitioner], reiterating that it already made partial payment, and informing the BIR that further reconciliation of the other items is ongoing.

[Respondent] sent another letter to respondent on January 20, 2014, transmitting the partial accounts reconciliation of the discrepancies being assessed against it.

On February 17, 2014, [Respondent] wrote a letter to [Petitioner], requesting for reinvestigation of the tax deficiency assessment. This was followed by the submission of additional accounts reconciliation on the alleged discrepancies stated in the PAN on July 11, 2014.

Subsequently, on November 7, 2014, [Respondent] received a letter dated November 6, 2014 from [Petitioner] denying its request for reinvestigation.

On February 16, 2015, [Respondent] received a notice from [Petitioner] requesting [Respondent] to pay the deficiency taxes for taxable year 2008, amounting to [Php]506,028,228.24, broken down as follows:

ASSESSMENT NO.	TAX TYPE	PERIOD COVERED	BASIC	SURCHARGE	INTEREST	COMP. PENALTY	TOTAL
WC-116-109-00033741-08-13-133	WC	2008	17,900,584.89	0.00	19,493,736.95	0.00	37,394,321.84
VT-116-109-00033741-08-13-1336	VT	2008	67,753,197.71	0.00	74,528,517.49	0.00	142,281,715.20
IT-116-109-00033741-08-13-132	IT	2008	175,931,100.38	0.00	150,421,090.82	0.00	326,352,191.20
TOTAL			**262,576,825.03**	**0.00**	**245,524,562.09**	**0.00**	**506,028,228.24**

As a result, [Respondent] filed the instant Petition for Review before this Court on February 20, 2015."[8]

The Ruling of the Second Division

On July 04, 2018, the Second Division promulgated the original Decision dismissing the Petition for Review filed by herein Respondent for lack of jurisdiction. For failure to file a protest to the Formal Letter of Demand ("FLD") within the reglementary period, the assessment became final, executory, and demandable.

Respondent then filed a "Motion for Reconsideration (of the *Decision* dated 4 July 2018)"[9] on July 19, 2018, arguing that the court has jurisdiction to review collection proceedings initiated by the Commissioner of Internal Revenue ("CIR").

On October 29, 2018, the Second Division promulgated the Assailed Amended Decision granting Respondent's "Motion for Reconsideration (of the *Decision* dated 4 July 2018)". According to the Amended Decision, upon revisit of the matter, while there is no disputed assessment, the Court can assume jurisdiction over the Petition for Review under "other matters" clause of Section 7(a)(1) of Republic Act ("R.A.") No. 1125, as amended by R.A. No. 9282. It was determined however that the absence of a due date for payment in the FLD and the relevant Assessment Notices violates Respondent's right to due process. Thus, the assessments issued by Petitioner are void.

Aggrieved, Petitioner filed through registered mail a "Motion for Reconsideration Re: Amended Decision dated 29 October 2018"[10] on November 14, 2018, which the Second Division denied in the Assailed Resolution. In denying Petitioner's motion, the court *a quo* found no substantial argument was raised to merit reconsideration of the Assailed Amended Decision.

The Proceedings in the Court of Tax Appeals En Banc

On March 27, 2019, Petitioner filed the present "Petition for Review"[11].

On June 13, 2019, the Court issued a Resolution[12] ordering Respondent to comment on the Petition for Review.

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8 *Id.*, pp. 899-902.
9 *Id.*, pp. 923-936.
10 *Id.*, pp. 957-969.
11 Rollo, pp. 1-24. Record shows that Petitioner received the March 11, 2019 Resolution on March 15, 2019; Docket, p. 982.
12 *Id.*, pp. 42-43.

On June 21, 2019, Respondent filed its "Comment/Opposition (to Petition for Review dated 28 March 2019)"[13] ("Comment").

On September 03, 2019, the Court issued a Resolution:[14] (a) noting Respondent's Comment, and (b) referring the instant case for mediation.

Since the parties decided not have their case mediated by the Philippine Mediation Center Unit – Court of Tax Appeals, a Resolution[15] was issued on December 02, 2019 submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) While there is no disputed assessment, the honorable court in Division erred in ruling that it can assume jurisdiction over the instant Petition for Review under "other matters";

2) Even assuming that the present case falls under the scope of "other matters", the same is filed out of time; and

3) Without admitting that the honorable court had jurisdiction over the instant petition, the honorable court in Division erred in declaring the deficiency tax assessment void for allegedly not containing a definite due date for payment since Respondent is estopped from questioning the validity of the assessment.[16]

The Arguments of Parties

Petitioner mainly avers that the "other matters" clause of Section 7 of R.A. No. 9282[17] does not include assessment cases. It pertains to matters ancillary to disputed assessment and refunds of internal revenue taxes. To find otherwise would set a dangerous precedent that would allow an otherwise final assessment be questioned in the guise of "other matters" rendering procedure of the BIR naught.

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[13] *Id.*, pp. 44-58.
[14] *Id.*, pp. 60-61.
[15] *Id.*, pp. 65-67.
[16] *Id.*, p. 3.
[17] 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 Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.

Petitioner also adds that even assuming without conceding that the present case falls under the clause "other matters", the court's jurisdiction is limited only to the propriety of the collection process made by Petitioner against Respondent. It cannot go beyond the validity of the assessment which has already become final and executory.

Furthermore, Petitioner submits that assuming the court will take cognizance of the case under "other matters", the present case was filed out of time on February 20, 2015. Respondent admitted that it received a Collection Letter dated December 04, 2013 on December 17, 2013. Respondent should have filed a Petition for Review thirty (30) days from such date to question the validity of the collection procedure initiated by Petitioner.

Lastly, Petitioner contends that contrary to the findings of the Second Division, the FLD has fixed and definitely set the deficiency tax liabilities of Respondent. Petitioner maintains his position that the doctrine laid down in the decision of the Supreme Court in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[18] ("*Fitness by Design*") must be revisited. Moreover, for making several payments based on the deficiency tax assessment contained in the FLD, Respondent is now estopped from questioning the validity of the FLD.

On the other hand, Respondent in its Comment counters that the Petition for Review must fail for a number of reasons. *First*, the arguments raised by Petitioner are mere rehash of its previous arguments before the Second Division. *Second*, the court *a quo* correctly assumed jurisdiction over the case under the "other matters" clause, there being an issue on the validity of the collection proceedings initiated by Petitioner despite a void tax deficiency assessment. *Third*, it has long been established that the Court of Tax Appeals ("CTA") can delve into the validity of the assessment when there is a question as to whether Petitioner can collect based on the assessment being looked into. *Fourth*, Respondent filed the petition four (4) days after its receipt of the Final Notice dated January 09, 2015. It is the Final Notice which contained the demand of Petitioner to pay the alleged deficiency taxes. *Lastly*, the Second Division's ruling that the tax assessment is void for failure to specify a due date for payment is supported by law and established jurisprudence.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Resolution, denying Petitioner's "Motion for Reconsideration Re: Amended Decision dated 29 October 2018", on March 11, 2019. Petitioner received said Resolution on March 15, 2019.

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[18] G.R. No. 215957, November 09, 2016.

Pursuant to Rule 4, Section 2(a)(1)[19] in relation to Rule 8, Section 3(b)[20] of the Revised Rules of the Court of Tax Appeals[21] ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 30, 2019 within which to file his petition for review.

On March 27, 2019, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

The Court in Division properly assumed and exercised jurisdiction over the case.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine controversies."[22] The CTA, as a court of special jurisdiction, only takes cognizance of matters clearly within its jurisdiction.[23]

The jurisdiction of the CTA, in particular those falling under the "other matters" clause has been ruled to include, but not limited to, determination of the validity of a warrant of distraint and levy issued by the CIR[24] and prescription of the CIR's right to collect taxes[25].

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19 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

20 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

21 A.M. No. 05-11-07-CTA, November 22, 2005.

22 Guy v. Court of Appeals, G.R. Nos. 165849, 170185, 170186, 171066 and 176650, December 10, 2007.

23 Commissioner of Internal Revenue v. Silicon Philippines, Inc., G.R. No. 169778, March 12, 2014.

24 Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.

25 Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.

Thus, it is without doubt that the CTA has the competence to determine whether collection was validly made by the BIR. Such issue falls within the ambit of "other matters" arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws administered by the BIR.

Note however that the exercise of the Court's jurisdiction to rule on "other matters" is conditioned on the timeliness of the filing of the appeal. Section 11 of RA No. 1125, as amended by RA No. 9282 and Section 3(a) of Rule 8 of the RRCTA provides that an appeal with the CTA must be made within thirty (30) days after the receipt of such decision or ruling issued by the BIR.

The basis for Respondent's filing of its Petition for Review with the Second Division was Petitioner's issuance of the Final Notice[26] dated January 09, 2015. The purpose of the issuance of said Final Notice was to enforce the collection of the alleged deficiency tax assessments still pending against Respondent. Thus, the mandated thirty-day period to appeal before the CTA should be reckoned from Respondent's receipt of the Final Notice, which constitutes an act of Petitioner on "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR, which could be the subject of an appropriate appeal with the CTA.

Counting thirty (30) days from February 16, 2015, the date of receipt of the Final Notice by Respondent, it had until March 18, 2015 within which to question the issuance of said Final Notice by Petitioner in connection with the assessment issued against it.

Records show that Respondent timely filed with the court *a quo* its Petition for Review on February 20, 2015. Justifiably, the Second Division properly assumed and exercised jurisdiction over the case.

For lack of a definite and unequivocal demand for payment on a certain date, the assessment is perforce void.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[27] In the context in which it is used in the NIRC of 1997, as amended, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed.**[28]

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[26] Docket, Exhibit "P-47", p. 529.
[27] SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.
[28] Adamson, et al. v. Court of Appeals, et al., G.R. Nos. 120935 and 124557, May 21, 2009.

Thus, in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*[29], the Supreme Court categorically pronounced that **an assessment contains** not only a computation of tax liabilities, but **also a demand for payment <u>within a prescribed period</u>**.

In the case at bar, the last paragraph of the FLD[30] provides:

> "In view thereof, you are **requested to pay** your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you are enrolled using the BIR Payment Form (BIR Form 0605) **<u>within the time shown in the enclosed assessment notice</u>**. Afterwards, submit copy thereof to Large Taxpayers Regular Audit Division, 1 located at Rm. 216 National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein Formal Letter of Demand if warranted."

However, a careful scrutiny of the records shows that for each of the enclosed Audit Result/Assessment Notices referred to in the FLD (*i.e.,* Audit Result/Assessment Notice Nos. IT-116-LOA-00033741-08-13-132[31], WC-116-LOA-00033741-08-13-133[32], WT-116-LOA-00033741-08-13-134[33], DST-116-LOA-00033741-08-13-135[34], and VT-116-LOA-00033741-08-13-136[35]), the due date indicated, within which Respondent must pay the alleged deficiency assessment, was "January 00, 1900" which is not a valid date.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[36], the Supreme Court cancelled the Final Assessment Notice as well as the Audit Result/Assessment Notice for failure to contain a definite period for payment of the tax assessed. According to the Supreme Court, the lack of a date certain negates BIR's demand for payment.

Following the doctrine laid above, Petitioner's assessment in this case similarly cannot withstand the test of validity. The subject FLD cannot be deemed a valid formal assessment notice absent a specific valid date or period within which the alleged tax liabilities must be settled or paid by Respondent.

It must be emphasized that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the

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29 G.R. No. 128315, June 29, 1999.
30 Docket, Exhibit "P-34", pp. 464-468.
31 *Id.*, Exhibit "P-34-1", p. 469.
32 *Id.*, Exhibit "P-34-2", p. 470.
33 *Id.*, Exhibit "P-34-3", p. 471.
34 *Id.*, Exhibit "P-34-4", p. 472.
35 *Id.*, Exhibit "P-34-5", p. 473.
36 G.R. No. 215957, November 09, 2016.

penalties, surcharges and interest begin to accrue against.[37] The uncertainty in the date of payment is a far cry from the basic requirement, *viz.*, a definite demand to immediately pay the assessed tax liabilities within a time certain.

In light of the foregoing, We see no reason to reverse the conclusions and rulings of the Second Division.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on March 27, 2019 is **DENIED** for lack of merit. Accordingly, the October 29, 2018 Amended Decision and March 11, 2019 Resolution in CTA Case No. 8992 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[37] Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GRAND PLAZA HOTEL CORPORATION,
Respondent.

CTA EB NO. 2039
(CTA Case No. 8992)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 29 2020
3:50 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to the *ponencia* of our esteemed colleague, Associate Justice Ma. Belen Ringpis-Liban, it is my opinion that the Court has no jurisdiction over respondent's original Petition for Review, filed before the Court in Division, for reasons that shall be explained below.

In the *ponencia*, it was correctly stated that:

> ...
>
> Note however that the exercise of this Court's jurisdiction to rule on "other matters" is conditional on the timeliness of the filing of the appeal. Section 11 of RA No. 1125, as amended by RA 9282 and Section 3(a) of Rule 8 of the RCCTA provides that an appeal with the CTA must be made within thirty (30) days after the receipt of such decision or ruling issued by the BIR.[1]
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> ...

Indeed, for the Court to validly assume jusridiction over the case, respondent's appeal before the Court (in Division) must have been filed on time. The *ponencia* deems respondent's appeal filed on time. Yet, a careful review of the case records reveals the contrary hence, my dissent.

In the *ponencia*, the reglementary period for filing respondent's Petition for Review before the Court in Division was counted from 16 February 2015 or from the date respondent received petitioner's Final Notice (dated 09 January 2015) for payment of its tax liabilities for taxable year 2008.

As culled from the records, respondent had already received a Formal Letter of Demand (**FLD**) as early as 19 September 2013. After such receipt, it appears that respondent had sent various letters to the Bureau of Internal Revenue (**BIR**), even partially paying its tax liabilities at one point in the amount of ₱2,073,158.88. After payment, respondent continued submitting records to the BIR to justify a reduction of its tax assessment. However, it was only on 17 February 2014 or almost five (5) months after it received the FLD that it decided to file a request for reinvestigation of the same.

Per Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, a request for reinvestigation of the BIR's assessment must be made within thirty (30) days from receipt thereof, to wit:

> ...
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> **SEC. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided,

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[1] Decision, p. 10.

> however, That a preassessment notice shall not be required in the following cases:
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> ...
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[2]
>
> ...

It being clear that respondent's request for reinvestigation had long been filed out of time, the FLD received by respondent on <u>19 September 2013</u> had already lapsed into finality and therefore, could no longer be disputed before this Court. Respondent should have filed a request for reconsideration or reinvestigation within 30 days from its receipt of the FLD or appealed its case directly with this Court within such period.

As gleaned from the facts, <u>more than two (2) years have elapsed from respondent's receipt of the FLD and the filing of its original Petition for Review before the Court in Division on 20 February 2015</u>, without a valid request for reinvestigation being filed by it in the *interim*. The foregoing considered, it is more than clear that the Special Second Division no longer had jurisdiction to rule on respondent's original petition.

The consideration therefore that the reglementary period for respondent's filing of its petition before the Court should be reckoned from <u>16 Febraury 2015</u> has no basis. Neither should the issue of the assessment's validity or invalidity itself be reason to justify

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2 Emphasis supplied.

a grant of respondent's petition when the Court clearly has no jurisdiction, the same being filed out of time.

It is elementary that "the perfection of an appeal in the manner and within the period laid down by law is mandatory and jurisdictional".[3] As held by the Supreme Court in *Boardwalk Business Ventures, Inc. v. Villareal, et al.*[4]:

> ...
>
> To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. **The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays.** Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party have the correlative right to enjoy the finality of a decision in his favor.
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> ...
>
> At this point, it must be emphasized that since petitioner's right of appeal is a mere statutory privilege, it was bound to a strict observance of the periods of appeal, which requirements are not merely mandatory, but jurisdictional.[5]
>
> ...

The foregoing considered, I **VOTE** to: (1) **GRANT** herein petitioner's Petition for Review filed on 27 March 2019; (2) **REVERSE** the Special Second Division's Amended Decision dated 29 October 2018 in CTA Case No. 8992 entitled *Grand Plaza Corporation v. Commissioner of Internal Revenue*; and, (3) **REINSTATE** its 04 July 2018 Decision, dismissing the case for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[3] *Sps. Lebin v. Mirasol, et al.*, G.R. No. 164255, 07 September 2011.
[4] G.R. No. 181182, 10 April 2013.
[5] Emphasis supplied.