REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ALAN U. CHAN, *Petitioner,*	**CTA CASE NO. 10034**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 09 2024 4:30 p.m.

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THE PARTIES

Petitioner Alan U. Chan is of legal age, Filipino, married, and with address at 180 Roberto St., Estacio Village, Libertad, Butuan City.[5] Petitioner is registered with the Bureau of Internal Revenue ("**BIR**") with Tax Identification Number 104-485-891.[6]

Respondent CIR is vested under the law with the authority to carry out the functions, duties, and responsibilities of said office, including the power to assess and collect all national internal revenue taxes.[7]

THE FACTS

On December 12, 2012, petitioner received a Letter of Authority ("**LOA**") No. 103-2012-00000037 dated November 26, 2012, issued by BIR Revenue District Office ("**RDO**") No. 103, Butuan City authorizing Revenue Officer ("**RO**") Eliezer Deligero and Group Supervisor Lisa Tomaneng to examine petitioner's books of accounts and other accounting records for taxable year ("**TY**") 2011.[8]

On February 9, 2015, petitioner received a Preliminary Assessment Notice ("**PAN**") dated February 4, 2015 ("***First PAN***").[9] With this, petitioner filed a *Letter (Re: Response to PAN dated 4 February 2015)* dated February 20, 2015, signed by Atty. Simon Peter S. Jalad (Atty. Jalad) with the BIR on February 24, 2015.[10]

On August 27, 2015, petitioner received another PAN dated August 24, 2015 ("***Second PAN***").[11] In reply, petitioner filed a *Letter (Re: Response to PAN dated 24 August 2015)* dated September 7, 2015, signed by Atty. Jalad, with the BIR on September 10, 2015.[12]

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[5] *Second Amended Petition for Review*, par. 4.
[6] See Exhibits "P-4" and "P-6".
[7] Joint Stipulation of Facts and Issues ("**JSFI**"), Admitted Facts, par. 1, *infra* at note 50.
[8] JSFI, Admitted Facts, par. 2(a), Exhibit "R-1", BIR Records, p. 326; Memorandum, p. 905.
[9] JSFI, Admitted Facts, par. 2(b); Exhibit "P-3", Docket – Vol I, pp. 47-48.
[10] Exhibit "P-12", Docket – Vol I, pp.70-72.
[11] JSFI, Admitted Facts, par. 2(c); Exhibit "P-4", Docket – Vol I, pp. 49-50.
[12] Exhibit "P-13", Docket – Vol I, pp. 73-76.

On October 5, 2015, a *Memorandum* signed by Atty. Nestor T. Escalona, OIC-Chief of the Legal Division, and Atty. Nasser Tangcor, OIC-Regional Director,[13] referring to a "protest hurled by [petitioner] on the [PAN]," was issued. In the *Memorandum*, Atty. Escalona finds the *Letter (Re: Response to PAN dated 24 August 2015)* dated September 7, 2015 of petitioner untenable.

On November 17, 2015, a Formal Letter of Demand ("**FLD**")[14] signed by Atty. Tangcor was issued, seeking to collect deficiency income tax ("**IT**"), value-added tax ("**VAT**"), and expanded withholding tax ("**EWT**"), inclusive of interests and surcharges and exclusive of compromise penalties, for taxable year ("**TY**") 2011:

	Income Tax	**VAT**	**EWT**
First quarter	₱ 501,949.97	₱ 246,532.94	
Second quarter	427,671.55	1,359,312.64	
Third quarter	377,964.12	405,705.11	
	₱1,307,585.64	₱2,011,550.69	₱ 21,909.43
Total			**₱3,341,045.76**

On February 14, 2017, a *Final Reminder* signed by Revenue District Officer Lordel T. Monteclaro (RDO Monteclaro) was issued, [15] seeking the collection of the taxes and penalties indicated in the FLD, to which petitioner filed a *Letter (Re: Final Reminder for Alan U. Chan in relation to 2011 Tax Audit)* dated March 1, 2017, signed by Atty. Jalad.[16]

On March 7, 2017, a *Letter* signed by RDO Monteclaro was issued, forwarding to petitioner certified true copies of certain documents, including the FLD.

On March 14, 2017, a *Protest with Request for Reconsideration and Reinvestigation* ("***Protest***") dated March 10, 2017,[17] was filed with the BIR, stating that petitioner only received a copy of the FLD dated 17 November 2015 on March 7, 2017, after receiving the *Final Reminder* on February 22, 2017.

[13] JSFI, Admitted Facts, par. 2(i); Exhibit "P-14", Docket – Vol I, pp. 77-78.
[14] JSFI, Admitted Facts, par. 2(d); Exhibit "P-6", Docket – Vol I, pp. 52-54.
[15] JSFI, Admitted Facts, par. 2(e); Exhibit "P-5", Docket – Vol I, p. 51.
[16] Exhibit "P-8", Docket – Vol I, p. 56.
[17] Exhibit "P-10" to "P-10-9", Docket – Vol I, pp. 58-68.

On October 10, 2017, petitioner filed a *Letter (Re: Request to Resolve Protest with Request for Reconsideration and Reinvestigation)* on an even date with the BIR.[18]

On October 12, 2017, a *Letter* signed by RDO Monteclaro[19] was issued informing petitioner that the BIR treated the assessment as "final and executory" and such has been classified as a delinquent account on November 16, 2015.

On November 8, 2017, petitioner filed an *Appeal* to the BIR Commissioner.[20]

On July 3, 2018, a *Memorandum* signed by Atty. Escalona recommended initiating summary remedies to collect, considering that the assessment has become final and executory.[21]

On January 9, 2019, a Warrant of Distraint and/or Levy ("**WDL**") dated December 17, 2018, signed by Regional Director Jose Eric Furia (RD Furia), was served to petitioner.[22] Upon receipt, petitioner filed a *Letter* dated January 10, 2019[23] addressed to RD Furia, asserting that the WDL was prematurely issued.

On February 6, 2019, a *Letter* dated February 4, 2019, signed by RD Furia, was received by petitioner stating that the assessment had become final and executory.

Aggrieved, on February 26, 2019, petitioner filed a *Petition for Review (with Motion for Suspension of Collection of Taxes under Rule 10 of AM No.05-11-07-CTA).*[24]

On March 5, 2019, *Summons*[25] was issued by the Court.

On March 18, 2019, petitioner filed a *Motion to Admit Amended Petition for Certiorari* [*sic*] with an attached *Amended Petition for Review (with Motion for Suspension of Collection of Taxes under Rule 10 of A.M.No.05-11-07-CTA).*[26]

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[18] Exhibit "P-11", Docket – Vol I, p. 69.
[19] JSFI, Admitted Facts, par. 2(g); Exhibit "P-7", Docket – Vol I, p. 55.
[20] Exhibit "P-2", Docket – Vol I, pp. 36-46.
[21] JSFI, Admitted Facts, par. 2(k); Exhibit "P-17", Docket – Vol I, pp. 82-83.
[22] JSFI, Admitted Facts, par. 2(j); Exhibit "P-15", Docket – Vol I, p. 79.
[23] Exhibit "P-16", Docket – Vol I, pp. 80-81.
[24] *Supra* at note 1.
[25] Docket – Vol. I, p. 111.
[26] *Id.*, pp. 119-121.

On March 21, 2019, respondent filed his *Motion for Extension of Time to File Answer.*[27]

The Court granted petitioner's *Motion to Reset Hearing* and *Motion to Admit Amended Petition for Certiorari [sic]* on March 22, 2019,[28] and respondent's *Motion for Extension of Time to File Answer* on March 26, 2019.[29]

On March 28, 2019, petitioner filed his *Judicial Affidavit,*[30] which was noted in a *Minute Resolution* dated March 29, 2019.[31]

On April 1, 2019, petitioner filed a *Motion for Leave to Admit Second Amended Petition for Review* with the attached *Second Amended Petition for Review,*[32] which the Court granted in a *Resolution* dated April 8, 2019.[33]

On April 16, 2019, respondent filed his *Urgent Motion for Second Extension of Time to File Answer,*[34] which the Court granted in a *Resolution* dated April 29, 2019.[35]

On May 10, 2019, respondent filed his *Answer (with Opposition to Motion for Suspension of Collection of Taxes).*[36]

On May 14, 2019, petitioner filed his *Formal Offer of Exhibits (with re-marking of exhibits).*[37]

On May 20, 2019, the Court promulgated a *Resolution* noting respondent's *Answer (with Opposition to Motion for Suspension of Collection of Taxes)* and ordering petitioner to file an additional copy of his *Formal Offer of Exhibits (with re-marking of exhibits).*[38]

On May 21, 2019, respondent filed a *Motion to Defer Transmittal of BIR Records,*[39] which the Court granted in a *Resolution* dated May 27, 2019.[40]

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[27] *Id.*, pp. 143-146.
[28] *Id.*, p. 149.
[29] *Id.*, p. 151.
[30] Exhibit "P-1", *id.*, pp. 152-164.
[31] *Id.*, p. 242.
[32] *Id.*, pp. 243-246.
[33] *Id.*, p. 269.
[34] *Id.*, pp. 270-273.
[35] *Id.*, p. 276.
[36] *Id.*, pp. 282-300.
[37] *Id.*, pp. 303-309.
[38] *Id.*, p. 332.
[39] *Id.*, pp. 333-336.
[40] *Id.*, p. 339.

On June 4, 2019, respondent filed a *Manifestation with Motion for Extension to File Comment on Petitioner's Formal Offer of Exhibits ("**FOE**")*,[41] which the Court noted and granted on June 6, 2019.[42]

On February 6, 2020, the Court denied petitioner's *Motion for Suspension of Collection of Taxes*.[43]

Respondent's *Pre-Trial Brief* was filed on June 29, 2020,[44] and respondent's *Amended Pre-Trial Brief* was filed on September 7, 2020.[45] On even date, respondent's *Ex-Parte Compliance*,[46] with attached BIR Records consisting of one (1) folder, pages 1 to 1,083, was filed to the Court.

On October 14, 2020, petitioner filed the *Judicial Affidavit* of Alan U. Chan[47] and his *Pre-Trial Brief*,[48] which the Court noted in a *Minute Resolution* dated October 15, 2020.[49]

On December 11, 2020, both parties filed a *Joint Stipulation of Facts and Issues* ("**JSFI**"),[50] which the Court approved in a *Resolution* dated December 18, 2020.[51]

On January 19, 2021, the *Pre-trial Order* was issued terminating the pre-trial.[52]

Trial ensued.

On February 17, 2021, petitioner testified on direct examination by way of a *Judicial Affidavit*.[53]

Petitioner filed his *FOE* on March 4, 2021.[54] Respondent filed his *Comment (on Petitioner's Formal Offer of Evidence dated 26 February 2021)* on March 10, 2021.[55] The *FOE* submitted for

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[41] *Id.*, pp. 340-343.
[42] *Id.*, p. 345.
[43] *Id.*, pp. 400-408.
[44] *Id.*, pp. 419-423.
[45] *Id.*, pp. 430-434.
[46] *Id.*, pp. 427-429.
[47] Exhibit "P-25", *id.*, pp. 682-696.
[48] *Id.*, pp. 578-586.
[49] *Id.*, p. 766.
[50] *Id.*, pp. 788-796.
[51] *Id.*, pp. 798-799.
[52] *Id.*, pp. 802-809.
[53] *Id.*, p. 823.
[54] *Id.*, pp. 826-832.
[55] *Id.*, pp. 836-838.

resolution on March 15, 2021,[56] was resolved on June 30, 2021.[57]

On April 27, 2022, respondent presented RO Deligero and RO Edna E. Makiling, who testified on direct examination by way of their Judicial Affidavits.[58] On May 25, 2022, respondent continued the presentation of his evidence by presenting Chief RO Lisa Tomaneng and RO Felma Baguhin, who testified on direct examination by way of their Judicial Affidavits.[59]

Respondent filed his *Formal Offer of Evidence* on June 29, 2022.[60] On August 9, 2022, the Court received petitioner's *Comment/Opposition (to Respondent's FOE).*[61] On September 1, 2022, the Court resolved respondent's *FOE.*[62]

On October 12, 2022, respondent filed his *Memorandum.*[63] On December 28, 2022, petitioner filed his *Memorandum (for Petitioner Alan U. Chan).*

The case was submitted for decision on November 7, 2022,[64] and submitted anew for decision on January 12, 2023, following the belated receipt of petitioner's *Memorandum.*[65]

Hence, this *Decision.*

THE ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:[66]

> WHETHER OR NOT THE PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, AND COMPROMISE PENALTIES FOR TAXABLE YEAR 2011.

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[56] *Id.*, p. 841.
[57] *Id.*, pp. 852-853.
[58] *Id.*, p. 870.
[59] *Id.*, p. 873.
[60] Docket – Vol. III, p. 882-891.
[61] *Id.*, pp. 897-900.
[62] *Id.*, pp. 903-904.
[63] *Id.*, pp. 905-920.
[64] *Id.*, p. 924.
[65] *Id.*, unpaged.
[66] *JSFI*, Issue/s Stipulated by the Parties, *supra* at note 50.

PETITIONER'S ARGUMENTS

Petitioner argues that the First PAN, the Second PAN, and the FLD did not have any findings that the total sales declared by petitioner for TY 2011 were underdeclared. According to petitioner, such is an implied admission that the total sales of petitioner were properly declared.[67]

Petitioner likewise argues that the gross profit rate of 2.04% used by respondent failed to consider the declarations made by the taxpayer for the 4th quarter of 2011.[68] Petitioner also states that using the gross profit rate method to compute the alleged income has no legal and factual basis.[69]

Petitioner alleges that if the First PAN, the Second PAN, and the FLD disregard the annual income tax return ("**ITR**") and the 4th quarter VAT return, he will be subjected to double taxation. Petitioner posits that when "all the tax returns filed are taken into consideration in its [*sic*] entirety, that petitioner did not misdeclare his actual tax liability."[70] According to petitioner, such violates his fundamental rights.[71]

Petitioner adds that the First PAN, the Second PAN, and the FLD erroneously maintained that the quarterly income tax returns for the first three quarters of 2011 should reflect the actual sales and purchases or deductions of those quarters.[72] Invoking Section 74 of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, petitioner avers that what is required to be declared in the quarterly ITRs are only estimates, which may be corrected upon the filing of the annual ITR.[73]

Further, petitioner questions the findings in the First PAN and the Second FAN that he amended his quarterly ITRs only after receipt of the LOA. According to petitioner, respondent "may have overlooked the fact that the quarterly [ITRs] for 2011 were effectively amended by the filing of the annual [ITR]."[74]

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[67] *Second Amended Petition for Review*, par. 29.
[68] *Ibid.*
[69] *Id.*, par. 39.
[70] *Id.*, par. 30.
[71] *Id.*, par. 40.
[72] *Id.*, par. 31.
[73] *Id.*, pars. 32-33.
[74] *Id.*, pars. 35-36.

Anent the deficiency VAT assessment of ₱12,972,922.39, petitioner argues that the figures do not support the said amount stated in the financial statements, tax returns, and supporting documents.[75] Petitioner points out that the VATable sales he has declared are even more significant than the VATable sales per audit, which would even point to the conclusion that petitioner overpaid.[76]

Petitioner also assails the finding of respondent regarding his input tax for being inconsistent and unsupported.[77]

Finally, anent the withholding tax deficiency, petitioner attaches the Certificate of Creditable Tax Withheld at Source totaling ₱10,714.31.[78]

RESPONDENT'S ARGUMENTS

Respondent contends that the Court has no jurisdiction over the case considering that petitioner filed the *Petition for Review* more than thirty (30) days from receipt of the *WDL*.[79]

Respondent further alleges that the assessment has become final, executory, and demandable by petitioner's failure to file a protest within thirty (30) days from receipt of the *FLD*[80] and by not filing a *Petition for Review* before the Court within thirty (30) days from the lapse of the 180-day period for the RDO to decide.[81] Respondent remarks that the filing of a request to resolve does not toll the prescriptive period.[82]

Anent substantive matters, respondent argues that petitioner filed three (3) quarterly ITRs with a minimal declaration of sales and purchases resulting in minimal payments of taxes, which were found to be inconsistent with the records submitted by petitioner.[83] According to respondent, filing the annual ITR does not cure the inaccuracies, considering that Section 6(A) of the NIRC of 1997, as amended, does not allow amendment of the returns if there is an LOA against a taxpayer.[84]

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[75] *Id.*, par. 42.
[76] *Id.*, par. 43.
[77] *Id.*, par. 44.
[78] *Id.*, par. 46.
[79] *Answer*, pars. 8-9.
[80] *Id.*, pars. 10-16.
[81] *Id.*, pars. 17-19.
[82] *Id.*, par. 19.
[83] *Id.*, par. 29.
[84] *Id.*, pars. 30-33.

Anent petitioner's alleged withholding tax liability, respondent avers that petitioner never submitted sufficient documents to prove such claim before the BIR and that the Certificate of Creditable Tax Withheld at Source was only submitted in the appeal filed before the CIR and not when it was required of him by the officers involved in the audit.[85]

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the instant case.

Before the Court delves into the merits of the case, We shall first resolve whether the Court has jurisdiction to take cognizance of this case.

Section 7(a)(1) and (2) of Republic Act ("**RA**") No. 1125,[86] as amended by RA No. 9282,[87] confers jurisdiction to this Court relative to decisions and inactions of respondent, to wit:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] 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 [CIR] 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; *[Emphasis supplied.]*

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[85] *Id.*, pars. 36-37.
[86] An Act Creating the Court of Tax Appeals, June 16, 1954.
[87] 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, March 30, 2004.

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]...**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]*

The above provisions are likewise provided under Section 3(a)(1)(2), Rule 4,[88] and Section 3(a), Rule 8[89] of the RRCTA.

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent. The appeal must be filed by the taxpayer affected, or as worded by RA No. 9282, the party adversely affected, within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Further, the jurisdiction of the Court of Tax Appeals is not limited to decisions or inactions of the CIR involving assessments and refunds but also includes "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

Respondent claims that this Court has no jurisdiction over the instant case. Citing Section 228 of the NIRC of 1997, as amended, he alleges that the *Petition for Review* was filed out of time, and the contested assessment has become final, executory, and demandable.

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[88] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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 or other applicable law provides a specific period for action: ...

[89] 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.

Respondent further alleges that:[90]

Section 228 of the NIRC, as amended, provides the period within which taxpayers must file their protest and petition for review with the CTA against disputed assessments issued by the BIR. The said provision states: ...

In the instant case, it may be gleaned from the admissions made by petitioner himself that the protested assessment has attained finality. It was admitted that petitioner filed his protest with request for reconsideration and reinvestigation on 14 March 2017, which was allegedly unacted upon within one hundred eighty (180) days, to wit: ...

Clearly, petitioner knew that RDO 103 failed to act on his protest within the time prescribed by law. As such, he had thirty (30) days from the lapse of the one hundred eighty (180)-day period within which he should file a petition for review with the Court of Tax Appeals or with the CIR.

The lapse of the thirty (30)-day period within which he should file said appeal fell on 10 October 2017. However, instead of filing the necessary petition or appeal, petitioner opted to send a letter to RDO 103 and RR No. 17 of Butuan to resolve his protest.

It must be noted that such request to resolve does not toll the prescriptive period. As such, after 10 October 2017, the protested assessment became final, executory, and demandable. The receipt of the letter from the BIR on 23 October 2017 merely reiterated that the said assessment became final, executory, and demandable.

Further, even assuming, arguendo, that the appeal was timely filed with the Office of the Commissioner, it is submitted that the instant case is still filed out of time.

... ...

Having filed his Appeal to the Office of the Commissioner on 8 November 2017, and having noted that the Commissioner did not act on his Appeal, petitioner should have filed a petition for review after the lapse of thirty (30) days counted from the expiration of one hundred eighty (180) days from the filing of his appeal, or until 06 June 2018, failing such, the contested assessment shall become final, executory, and demandable.

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[90] *Supra* at note 63.

It is clear that no such petition was filed. It was only on 22 February 2019 when petitioner filed a petition for review in the Court of [Tax] Appeals. As such, it is respectfully submitted that the instant petition was filed out of time, and that the contested assessment has become final, executory, and demandable.

In addition, it is most respectfully submitted that while, indeed, this Honorable Court has jurisdiction over "Other Matters", the period to file such must still be reckoned from the final denial of the protest filed by the taxpayer, which, in this case, is the FLD, or, even assuming it was not properly served, then from the receipt of the Final Reminder or the letter informing petitioner that the assessment is already final and executory. To reiterate, petitioner should have appealed before this Honorable Court at the earliest opportunity when it received the notice that its assessment is already final and executory.

In the instant case, the petitioner had numerous opportunities to file its Petition for Review before this Honorable Court. First, petitioner could have filed its Petition within thirty (30) days from receipt of the Formal Letter of Demand which was sent to petitioner's registered address.

Even assuming that the same could not be the basis for the protest for the claimed erroneous service, petitioner could have filed its Petition after its receipt of the letter from RDO Lourdel Monteclaro demanding the payment of his tax liabilities on 22 February 2017, or his acknowledged receipt of the Formal letter of Demand on 7 March 2017.

Thereafter, petitioner even noticed and acknowledged that BIR did not act on its letter questioning the finality of the assessment, but still, petitioner did not file a Petition before this Honorable Court.

BIR even issued a letter dated 12 October 2017 received by petitioner on 23 October 2017 informing petitioner that the assessment is already final, and denying his protest. Once again, petitioner was aware that no action was made on his protest. Even when the Warrant of Distraint and/or Levy was received by petitioner on 9 January 2019, petitioner did not yet file a Petition before this Honorable Court.

Instead, petitioner slept on his rights and only decided to file the instant case after receiving the latest letter informing him that summary remedies will be taken on the delinquent account.

> For this reason, respondent most respectfully submits that this Petition was filed out of time, and hence, this Court has no jurisdiction over the instant case.

On the other hand, petitioner counters that the *Petition* was timely filed. He further counters that:[91]

> 21. As earlier stated, the FLD was only received by Petitioner Chan on 7 March 2017 which immediately prompted Chan to file his Protest with Request for Reconsideration and Reinvestigation on 14 March 2017 or within the thirty (30) day period to file the Protest.
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> 22. Thus, it is clear that the FLD was only received by Chan on 7 March 2017 which immediately prompted Chan to file his Protest with Request for Reconsideration and Reinvestigation on 14 March 2017 or within the thirty (30) day period to file the Protest.
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> 23. The Petitioner exerted efforts to have his Protest resolved by the Regional Director and the RDO by informing them thru his Letter dated 10 October 2017 the RDO 103 of the pendency of the Protest and the need to issue a Final Decision on Disputed Assessment (FDDA).
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> 24. Despite request by the Petitioner for an issuance of an FDDA, the Regional Director and the RDO refused to issue an FDDA. Instead, the RDO 103 issued a letter dated 12 October 2017 informing Chan that his case has become final and executory with the issuance of the FLD despite the fact that there was still a timely Protest filed by Petitioner.
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> 25. The BIR's letter dated 12 October 2017 was considered by Petitioner as a denial of his Protest because it is the only letter from the BIR that categorically mentioned the finality of the BIR's decision.
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> 26. It is only thru the letter dated 12 October 2017 (received on 23 October 2017) that the BIR relayed to the Petitioner that his case had already became final and executory. It was a definite determination of the BIR's ruling on Petitioner's Protest. Although the 12 October 2017 letter is not in a form of an FDDA, it is deemed similar and as effective as an FDDA because the tenor embodied in the letter is a clear indication that it is final and executory in nature. Since under the Tax Code, the Petitioner has an option to wait until the resolution of his Protest even beyond the 180-day period, then the Appeal to the [CIR] on 8 November 2017 or within thirty (30) days from receipt of the letter dated 12 October 2017 is still within the reglementary period.

[91] *Supra* at note 65.

> 27. With respect to his Appeal with the [CIR], the Petitioner also has an option to wait until the resolution of his Appeal even beyond the 180-day period. This is even affirmed by the Letter dated 4 February 2019 (Exhibit "P-1") which invoked RR No. 18-2013 stating that– "Or await the final decision of the Commissioner on the disputed assessment and appeal with the CTA within 30 days from receipt". However, the subsequent unprocedural actions of the Regional Director in issuing a Warrant of Distraint and/or Levy despite pendency of Petitioner's Appeal prompted Petitioner to file his letter dated 10 January 2019 questioning the legality of the Regional Director's action.
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> 28. There is nothing in the Warrant of Distraint and/or Levy which makes reference to the Petitioner's Appeal and which would categorically indicate that the Petitioner's Appeal has been denied by the [CIR]. It was only from the letter of the Regional Director dated 4 February 2019 and the Memorandum dated 3 July 2018 signed by Atty. Nestor T. Escalona, the Chief, Legal Division of BIR Revenue Region No. 17, Butuan City (both received by Petitioner on 6 February 2019) that it cannot be denied that the BIR rejected the Appeal.
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> 29. Since the Petitioner filed his Petition for Review with this Honorable Court on 26 February 2019, or within 30 days from receipt of the letter of the Regional Director dated 4 February 2019 and the Memorandum dated 3 July 2018, then the instant Petition for Review is filed on time.
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> 31. Based on the above ruling, it is clear that it is duty of the Commissioner to indicate clearly and unambiguously his final determination of Petitioner's Appeal. However, in this instant case, the Commissioner failed to discharge his duty of issuing a final ruling of Petitioner's Appeal. What instead happened was that the BIR's letter dated 4 February 2019 and the Memorandum dated 3 July 2018 serve as the Commissioner's final ruling.

The Court finds respondent's argument without merit and agrees with petitioner that the instant *Petition for Review* was filed on time.

Section 228 of the NIRC of 1997, as amended, prescribes the procedure and the period for protesting assessment, *viz.*:

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

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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. ...
>
> 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.

Correspondingly, Revenue Regulations ("**RR**") No. 12-1999, [92] as amended by RR No. 18-2013, [93] provides the procedure for protesting the assessment and for *appealing* respondent's decision or inaction on the *protest* or *administrative appeal* to the CTA, *viz.*:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent **may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof**. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> ... ...
>
> 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. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in

[92] 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.
[93] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.

> the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> If the ***protest*** is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may ***either***: (i) **appeal to the CTA** within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) **await the final decision of the Commissioner's duly authorized representative** on the disputed assessment.
>
> If the ***protest*** or ***administrative appeal***, as the case may be, **is denied**, in whole or in part, by the Commissioner, **the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision**. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the ***protest*** or ***administrative appeal*** is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may ***either***: (i) **appeal to the CTA** within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) **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.** *[Emphasis supplied]*

In determining the timeliness of an appeal from the inaction of the CIR, a plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-1999, as amended, reveals that there is only **one (1) "180-day period" of inaction** to speak of which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the decision of the CIR's authorized representative was appealed to the CIR.[94]

[94] *Larry E. Segaya/Les Engineering and Construction v. Commissioner of the Bureau of Internal Revenue*, CTA *EB* Case No. 2526, December 13, 2022.

There is nothing in Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999, as amended, which provides for a separate 180-day period for the CIR's representative to act on the protest and another 180-day period for the CIR to decide the appeal on the decision rendered by the CIR's authorized representative for the purpose of computing the 30-day period within which to appeal to the CTA.[95]

In the instant case, respondent maintains that the protested assessment has attained finality because petitioner did not appeal to the CTA within 30 days after the lapse of the 180 days, reckoned from the filing of petitioner's *Protest*[96] on March 14, 2017. The 180-day period expired on September 10, 2017; thus, according to respondent, petitioner had 30 days therefrom, or until October 10, 2017, to appeal to the CTA. Respondent claims that instead of filing an appeal to the CTA, petitioner opted to send a letter dated October 10, 2017, to RR No. 17 and RDO 103, Butuan City, requesting the said offices to resolve his *protest.*

Under the circumstances, the Court finds that petitioner chose to "await the final decision" of the CIR's duly authorized representative on his protest pursuant to Section 3.1.4 of RR No. 12-1999, as amended, which implements Section 228 of the NIRC of 1997, as amended. Section 3.1.4 states that petitioner may either:

(i) **appeal to the CTA** within thirty (30) days after the expiration of the one hundred eighty (180)-day period; ***or***
(ii) **await the final decision of the Commissioner's duly authorized representative** on the disputed assessment.

It bears to note that "awaiting the final decision" is an *alternative course of action* available to the taxpayer, like petitioner, in case there is inaction on the *protest* by the CIR's duly authorized representative within the prescribed 180-day period.

Subsequently, RDO 103 issued a letter dated October 12, 2017, informing petitioner that his tax case has become final and executory with the issuance of the FLD. Petitioner treated the letter he received on October 23, 2017, as a denial of his protest. Following this, petitioner elevated his protest to the Office of the Commissioner on November 8, 2017, within 30

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[95] *Id.*
[96] Protest with Request for Reconsideration and Reinvestigation dated March 10, 2017, *supra* at note 17.

days from receipt of the denial letter, also pursuant to Section 3.1.4 as previously quoted.

Notwithstanding the pendency of the administrative appeal, a WDL dated December 17, 2018, was served by the BIR to petitioner on January 9, 2019.[97] Upon receipt of the WDL, petitioner filed a *Letter* dated January 10, 2019,[98] addressed to RD Furia, invoking that the WDL was prematurely issued given the pendency of his Appeal with the Office of the Commissioner and requesting the RD to recall the WDL since the assessment has not become final and executory.

In response, petitioner received on February 6, 2019 a *Letter* dated February 4, 2019, signed by RD Furia,[99] stating that the assessment had become final and executory and that the subject WDL is valid and legal.

On February 26, 2019, within 30 days from receipt of the said *Letter*, petitioner filed the instant *Petition for Review.*[100]

We find that petitioner properly reckoned the 30 days to appeal to the CTA from his receipt of the said *Letter* on February 6, 2019.

In *Light Rail Transit Authority v. Bureau of Internal Revenue* (*LRTA case*),[101] the Supreme Court ruled that the Regional Director's June 30, 2014 Letter denying LRTA's May 6, 2011 appeal to the Office of the Commissioner was the final decision on the protest that is appealable to the CTA. In this case, LRTA chose to wait for the CIR's ruling on its appeal on the denial of its protest; thus, according to the Supreme Court, the 30 days could not be counted from the issuance of the PCL, FNBS, or WDL for being issued while the assessment was still pending appeal with the Office of the Commissioner. We quote:

> Section 7 (a) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides for the exclusive appellate jurisdiction of the Court of Tax Appeals, thus:
>
> ... ...

[97] JSFI, Admitted Facts, par. 2(j); Exhibit "P-15", Docket – Vol I, p. 79.
[98] Exhibit "P-16", Docket – Vol I, pp. 80-81.
[99] JSFI, Admitted Facts, par. 2(h); Exhibits "P-1" to "P-1-3", Docket – Vol I, pp. 32-35.
[100] *Supra* at note 1.
[101] G.R. No. 231238, June 20, 2022.

"Decisions of the Commissioner in cases involving disputed assessments" mean decisions of the Commissioner on the protest to the assessment, not the assessment itself. ..., and the decision on the protest, **which may also be rendered by a duly authorized representative of the Commissioner — must be final**, *i.e.*, not merely tentative in character.

Apart from decisions on disputed assessments, inactions of the respondent Commissioner in cases involving disputed assessments may likewise be appealed. ...

In the case of a decision on the protest, the appeal must be filed 30 days from receipt of the adverse decision. On the other hand, in the case of inaction **on the protest**, this Court held in *Rizal Commercial Banking Corporation v. CIR* and *Lascona Land Co., Inc. v. CIR* that a taxpayer may either:

(1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period fixed by law for the [CIR] to act on the disputed assessment; or

(2) **await the final decision of the Commissioner** on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.

These options are mutually exclusive and resort to one bars the application of the other.

Here, **there was inaction on the part of the respondent on the petitioner's appeal of the Final Decision on a Disputed Assessment.** And under the circumstances, this Court finds that the **petitioner genuinely chose to await the Commissioner's final decision on its appeal**. To our mind, the option was made in good faith, not as an afterthought or "legal maneuver" to claim that the assessment had not yet become final. This is shown by the petitioner's replies to the Revenue District Officer when the latter issued the Preliminary Collection Letter and Final Notice Before Seizure. In both reply letters, petitioner said that "it will act on the matter as soon as we receive the Commissioner's decision on our appeal." **Indeed, petitioner filed the Petition for Review with the Court of Tax Appeals only after the issuance of the June 30, 2014 Letter that decided its May 6, 2011 appeal to the Office of the Commissioner**.

Furthermore, **considering that petitioner awaited the decision of the Commissioner on its appeal**, it is immaterial that it filed its Petition for Review beyond the 180-day period for respondent to act on disputed assessments. ...

Contrary to the ruling of the Court of Tax Appeals *En Banc*, the Final Decision on Disputed Assessment cannot be considered as the decision appealable to the Court of Tax Appeals under Section 7 (a) (1) of Republic Act No. 1125, as amended. This interpretation will render nugatory the remedy of appeal to the Office of the [CIR] of the denial of protest issued by his or her duly authorized representative, a remedy which was properly and timely availed of by petitioner. Subsection 3.1.5 of Revenue Regulations No. 12-1999, in effect when the assessment against petitioner was issued, provided:

... ...

Subsection 3.1.5 of Revenue Regulations No. 12-1999 is clear that if the protest is elevated to the respondent [CIR], "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." The [FDDA] was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.

Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the [CIR]. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all emanated from a **non-demandable assessment**. As such, all were void and should be of no force and effect. [*Emphasis and underscoring supplied*]

Considering the foregoing, the "disputed assessment" in this case "cannot yet be considered as final, executory, and demandable" because the denial of petitioner's protest was *timely* elevated to respondent on November 8, 2017.

Neither can the 30-day period be counted from petitioner's receipt of the WDL on January 9, 2019, given the pendency of petitioner's appeal with the Office of the CIR when it was issued. Similar to the *LRTA* case, the subject WDL was issued on the premise that "delinquent taxes" exist, which is incorrect. The WDL emanated from a "non-demandable assessment" [102] because the disputed assessment is not yet final; hence, it is void and of no force and effect.[103]

Moreover, petitioner opted to await respondent's final decision on the administrative appeal. This is shown by petitioner's January 10, 2019 letter to RD Furia questioning the WDL for being premature since it was issued before the resolution of his appeal with the Commissioner. As ruled in the *LRTA* case, it is immaterial that the *Petition for Review* was filed beyond the 180-day period, considering that petitioner awaited the decision of the Commissioner on its appeal.

Guided by the Supreme Court's pronouncement in the *LRTA case*, the Court holds that RD Furia's February 4, 2019 *Letter* was respondent's final decision appealable to the CTA. Records reveal that on December 5, 2017, petitioner's appeal with the Commissioner was endorsed to and received by the OIC-Regional Director of RR No. 17, Butuan City.[104] Thus, RD Furia, as the Regional Director of RR No. 17, was duly authorized to decide on petitioner's appeal on behalf of respondent.

Therefore, the filing of the instant *Petition for Review* on February 26, 2019, within 30 days from petitioner's receipt of the RD's *Letter* on February 6, 2019, is on time, and the Court has validly obtained jurisdiction over the instant case.

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[102] *Light Rail Transit Authority v. Bureau of Internal Revenue*, G.R. No. 231238, June 20, 2022.
[103] *Id.*
[104] Page 710, BIR Records, Exhibit R-49.

Respondent's right to assess petitioner of deficiency income tax, VAT, and EWT had already prescribed.

Assuming the assessment had been validly issued within the extended period, respondent's right to collect the assessed taxes had also prescribed.

Section 203 of the NIRC of 1997, as amended, states:

> *Section 203. Period of Limitation Upon Assessment and Collection.* - **Except** as provided in **Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [*Emphasis and underscoring supplied.*]

Given the foregoing, internal revenue taxes shall be assessed within *three (3) years* counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.

By exception, the assessment period may be extended, such as in the case of a false or fraudulent return, non-filing of a return, or when there is a valid waiver between the taxpayer and the BIR. Section 222(a) establishes the 10-year extraordinary period of assessment,[105] while Section 222(b) authorizes the extension of the original 3-year prescriptive period upon the execution of a valid waiver.[106]

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[105] Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
[106] SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. — ...
(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

Based on the records, We find no indication that respondent invoked the ten-year prescriptive period, and no valid waiver of the defense of prescription had been executed. While a *Waiver of the Defense of Prescription under the Statute of Limitations (Waiver)* had been formally offered and admitted as part of respondent's evidence,[107] the same is defective and ineffectual because it did not indicate the date of acceptance by the BIR and there is no proof that petitioner was furnished a copy thereof.

In *Republic v. First Gas Power Corp.*,[108] the Supreme Court, citing Revenue Memorandum Order (RMO) No. 20-90[109] and Revenue Delegation Authority Order (RDAO) No. 05-01,[110] laid down the requirements for the proper execution of the waiver and ruled:

> As shown in the foregoing, **RMO 20-90 and RDAO 05-01 clearly mandate that the date of acceptance by the BIR should be indicated in the waiver**. In the case of *CIR v. Standard Chartered Bank, (Standard Chartered Bank case)* this Court ruled that the provisions of the RMO and RDAO are mandatory and require strict compliance, hence, the **failure to comply with any of the requisites renders a waiver defective and ineffectual**.
>
> In *Philippine Journalists, Inc. v. CIR*, this Court discussed the importance of the date of acceptance in a waiver, to wit: ...
>
> In *CIR v. FMF Development Corporation*, the waiver was likewise found detective, and thus, did not validly extend the original three-year prescriptive period because it did not contain the date of acceptance by the CIR. This Court said that this is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period, thus: ...
>
> In subsequent cases, **this Court has consistently upheld the importance of the date of acceptance in waivers to validly extend the three-year period to assess the deficiency**. In *Kudos Metal*, the waivers were also found to be defective for the following reasons:

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[107] Exhibit R-49, BIR Records, p.710; Exhibit R-12, Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code. Exhibit "R-12", BIR Records, p. 447.
[108] G.R. No. 214933, February 15, 2022.
[109] Proper Execution of Waiver of Statute of Limitations Under the NIRC, April 4, 1990.
[110] Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, August 2, 2001.

> A perusal of the waivers executed by respondent's accountant reveals the following infirmities:
> 1. The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent.
>
> 2. **The waivers failed to indicate the date of acceptance**.
>
> 3. **The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.**
>
> Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.

In *CIR v. The Stanley Works Sales (Phils.), Inc.*, this Court nullified the waivers based on the following:

> ... The Court found that the following requisites were absent:
>
> (1) Conformity of either petitioner or a duly authorized representative;
>
> (2) **Date of acceptance showing that both parties had agreed on the Waiver** before the expiration of the prescriptive period; and
>
> (3) **Proof that respondent was furnished a copy of the Waiver**. *[Emphasis and underscoring supplied; original emphasis and citations omitted.]*

Similarly, the *Waiver* in this case failed to indicate the date of acceptance by respondent or his duly authorized representative. Moreover, there was no proof that petitioner was furnished a copy thereof after its acceptance by the BIR. Records show that petitioner testified on February 17, 2021 that he did not receive any waiver and could not remember if he signed a waiver.[111] When it was respondent's turn to present

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[111] Transcript of Stenographic Notes (TSN) dated February 17, 2021, pp. 22-23.
JUSTICE LIBAN
Were there waivers executed in this case?
JUSTICE SAN PEDRO
Waiver ng prescription period, Mr. witness?
MR. CHAN
I have not received any waiver, Your Honor.
JUSTICE LIBAN
Mayron ka bang pinirmahan na waiver?
MR. CHAN

evidence on April 27, 2022, his witness, RO Deligero, merely identified the waiver.[112] He did not testify as to the BIR's acceptance of the waiver, nor did he refute petitioner's testimony as to the execution and his non-receipt of the waiver.[113]

Hence, the Court finds that the subject *Waiver* is invalid and did not extend the original 3-year prescriptive period to assess petitioner for taxable year 2011.

We shall now determine whether the assessment has been issued within the 3-year prescriptive period.

First, We consider the deadline for the filing of the VAT returns on the 25th day following the close of each taxable quarter,[114] the filing of the annual income tax return for individuals on April 15 of the following year,[115] and the filing of expanded withholding tax ("**EWT**") remittance returns ten (10) days after the end of each month.[116]

Second, as previously quoted, the reckoning of the 3-year period is the date of actual filing or the deadline, whichever is later,[117] and the last day to assess is presented below:

I do not remember anymore, Your Honor.
JUSTICE SAN PEDRO
He answered he did not receive any waiver. Ang tanong ni Justice Liban meron ka bang pinirmahan.
ATTY. JALAD
Actually, Your Honors, the witness made a correction, he said that he can no longer remember if he signed a waiver or not.

[112] Exhibit R-50, Judicial Affidavit of Revenue Officer Eliezer O. Deligero
39. Q: What happened after your office sent out the follow up letter, if any?
A: The taxpayer executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.
40. Q: You mentioned that the taxpayer executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code. If shown to you, will you be able to identify the same?
A: Yes.
41. Q: I am showing you a document captioned as Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code found on pages 446-447 of the BIR Records and marked as **Exhibit "R-12"** for the respondent. What does this document have to do with the waiver you mentioned earlier?
A: This is the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code that I mentioned earlier.
42. Q: What happened after the execution of the waiver?
A: The taxpayer submitted additional documents which we reviewed. Thereafter, finding that Mr. Chan is still liable for deficiency taxes, I submitted a Memorandum embodying my findings and recommendation.

[113] *Id.*
[114] Section 114(A), NIRC of 1997, as amended.
[115] Section 51(C)(1), NIRC of 1997, as amended.
[116] Section 2.58(A)(2)(a), RR No. 2-1998, as amended.
[117] Section 203, NIRC of 1997, as amended.

Return	Actual date of filing	Reckoning of the three-year period	Last Day to Assess/ Prescriptive period
Income tax, 2011	April 10, 2012	April 15, 2012	**April 15, 2015**
VAT, Q1	April 26, 2011	April 26, 2011	April 26, 2014
VAT, Q2	July 20, 2011	July 25, 2011	July 25, 2014
VAT, Q3	October 20, 2011	October 25, 2011	October 25, 2014
VAT, Q4 (Amended)	February 14, 2012	February 14, 2012	**February 14, 2015**
EWT		January 10, 2012	**January 10, 2015**

An assessment is deemed made only on the date the assessment notice had been released, mailed or sent to the taxpayer. [118] Further, it is clear that the assessment contemplated in Sections 203 and 222 of the NIRC of 1997, as amended, refers to the service of the FAN upon the taxpayer.[119]

Here, it is undisputed that when the FLD was issued on November 17, 2015, and received by petitioner on March 7, 2017, it was already beyond the 3-year prescriptive period.

As presented above, for TY 2011, respondent had only until *April 15, 2015* to assess petitioner for income tax; *February 14, 2015*, for value-added tax; and *January 10, 2015*, for EWT, since the Waiver did not validly extend the period. Clearly, respondent's *right to assess* petitioner had long prescribed when the FLD, *without* the FANs, was supposedly released, mailed, or sent to petitioner on November 17, 2015.[120]

Assuming there was a valid *Waiver* and the subject FLD and the FANs were duly issued on November 17, 2015, within the extended period, respondent's right to collect petitioner's deficiency taxes had also prescribed.

The Supreme Court, in *CIR v. Court of Tax Appeals Second Division*,[121] citing *CIR v. United Salvage and Towage (Phils.), Inc.*, [122] interpreted Section 203 of the NIRC of 1997, as amended, in this wise:

> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual

[118] *CIR v. Pascor Realty & Development Corp.*, G.R. No. 128315, June 29, 1999, 368 PHIL 714-727.
[119] *CIR v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.
[120] JSFI, Admitted Facts, par. 2(d) and (f); Exhibits "P-6" and "P-9," Docket – Vol I, pp. 52-54, 57.
[121] G.R. No. 258947, March 29, 2022.
[122] G.R. No. 197515, July 2, 2014, 738 PHIL 335-357.

> filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax **begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.** [*Emphasis and underscoring supplied.*]

Indeed, when the BIR validly issues the assessment within the prescribed 3-year period, it has another 3 years to collect the tax due by *distraint, levy, or court proceeding.* The three years to collect the assessed tax begin to run on the date the assessment notice had been released, mailed, or sent to the taxpayer.

Applying the foregoing, the 3-year prescriptive period, counted from November 17, 2015, expires on November 17, 2018. Thus, when petitioner received the WDL dated December 17, 2018 on January 9, 2019, respondent's right to collect petitioner's deficiency taxes for TY 2011 had already prescribed.

The improper service of the FLD and the non-service of the FAN violated petitioner's right to due process; thus, the deficiency tax assessment is void.

Respondent failed to comply with the modes of service prescribed under Section 3.1.6, RR No. 18-2013,[123] amending RR No. 12-1999,[124] which reads:

> 3.1.6 **Modes of Service**. — The notice (PAN/**FLD/FAN**/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through **personal service** by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. ...

[123] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.
[124] 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.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service** can be resorted to when the party is not present at the registered or known address under the following circumstances:

...

(iii) **Service by mail** is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. [*Emphasis supplied*]

Section 3.1.6 was reiterated in RMO No. 40-2019.[125]

In the instant case, there was no showing that respondent served to petitioner the FLD and FANs through *personal service*, *substituted service*, or *registered mail.* A review of the BIR Records[126] does not indicate that copies of the FLD and FANs were served on petitioner. Likewise absent are the required "accomplishment at the bottom portion of the assessment notice" and the "written report under oath setting forth the manner, place, and date of service," among other details required under RR No. 18-2013.

Petitioner learned that an FLD was issued against him when he received the *Final Reminder* on February 22, 2017 and requested copies of pertinent documents. To reiterate, on March 7, 2017, RDO Monteclaro furnished petitioner with certified true copies of the requested documents, including the FLD.

[125] Prescribing Procedures for Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of RR No. 18-2013, May 30, 2019.
[126] Exhibit "R-24", BIR Records, pp. 566-578.

Petitioner claimed that it was only on March 7, 2017 that he received the FLD.[127] Respondent neither rebuts such claim nor presents evidence to prove service of the *original* copies of FLD and FANs to the registered or known address of petitioner by *personal service, substituted service,* or *service by mail* before March 7, 2017. Moreover, perusing the March 7, 2017 Letter does not show that the FANs relative to deficiency income tax, VAT, and EWT were among the certified true copies of documents forwarded by RDO Monteclaro to petitioner.

It is axiomatic that proper service of the assessment notices is an integral part of due process. Failure of respondent to validly serve the assessment notices betrays the constitutional protection granted to taxpayers. Accordingly, such renders the entire assessment null and void.

Neither can the subsequent receipt by petitioner of the FLD without the FANs and his opportunity to file a protest cure the defective service of the notice by respondent.

The fact that petitioner was able to file a *Protest with Request for Reconsideration and Reinvestigation* to the FLD does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment.[128] It is a settled rule that tax assessments issued in violation of the taxpayer's right to due process are null and void and bear no fruit.[129]

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies.[130] While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.[131]

All told, the cancellation of the deficiency income tax, value-added tax, and expanded withholding tax assessments, including the compromise penalties for TY 2011 against petitioner, is proper.

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[127] Q15/A15, Judicial Affidavit of Alan U. Chan, Docket – Vol. I, p. 156.
[128] *CIR v. Next Mobile, Inc.*, G.R. No. 232055 (Notice), April 27, 2022; *Pilipinas Shell Petroleum Corporation vs. CIR*, G.R. No. 172598, December 21, 200, cited in *CIR v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.
[129] *Id.*
[130] *Mabuhay Textile Mills Corp. v. Ongpin*, G.R. No. L-67784, February 28, 1986, 225 PHIL 383-396.
[131] *CIR v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent's Formal Letter of Demand dated November 17, 2015, and the Warrant of Distraint and/or Levy dated December 17, 2018, covering taxable year 2011 for the alleged deficiency IT, VAT, EWT, and compromise penalties, including interests and surcharges, are **CANCELLED** and **SET ASIDE**.

Further, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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