REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

METROPOLITAN CEBU WATER DISTRICT, *Petitioner,*	**CTA CASE NO. 8158**
	Members:
-versus-	**Del Rosario**, *Chairperson* **Uy**, *and* **Mindaro-Grulla**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 25 2014 ; 10:40 a.m.

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DECISION

DEL ROSARIO, P.J.:

This involves a Petition for Review filed by petitioner Metropolitan Cebu Water District (MCWD) to assail the Decision[1] dated June 2, 2010 rendered by respondent Commissioner of Internal Revenue (CIR) which denied petitioner MCWD's request for reconsideration of the deficiency franchise tax, value-added tax (VAT) and compromise penalty assessments in the total amount of ₱28,645,421.74 for the taxable year 2003.

THE FACTS

Petitioner MCWD is a government owned and/or controlled corporation created pursuant to and by virtue of Presidential Decree (PD) No. 198, as amended, otherwise known as the "Provincial Water Utilities Act of 1973". [2] Petitioner holds a valid Certificate of Conformance from the Local Water Utilities Administration (LWUA).[3] It is engaged, among others,

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[1] Annex "E", Petition for Review, *CTA Docket*, pp. 59 to 64; Annex "B", Joint Stipulations of Fact, *CTA Docket*, pp. 206 to 211.
[2] II(A)(1), Pre-Trial Order, *CTA Docket*, p. 499.
[3] II(A)(2), Pre-Trial Order, *CTA Docket*, p. 499.

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in the production, distribution and sale of potable water within its franchise area in the Cities of Cebu, Mandaue, Lapu-Lapu, Talisay, and Municipalities of Consolacion, Liloan, Cordova and Compostela[4] in the province of Cebu. Petitioner MCWD's business address is at MCWD Building, corner Magallanes and Lapu-Lapu Streets, Cebu City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification No. 000558031000.[5]

Respondent CIR is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising under the National Internal Revenue Code and other laws administered by the BIR. Her office address is at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

On November 16, 2007, petitioner MCWD received a Formal Letter of Demand[7] (FLD) of the same date, with attached Details of Discrepancies and Assessment Notices,[8] from BIR, Revenue Region No. 13, Cebu City. Petitioner MCWD was assessed for deficiency taxes amounting to ₱28,645,421.74 for the taxable year 2003, inclusive of interest and surcharges, broken down as follows:

Assessments	Amount
Franchise Tax	₱28,092,964.99
VAT	502,456.75
Compromise Penalties (*for failure to file VAT and Franchise Tax returns)*	50,000.00
TOTAL AMOUNT DUE AND DEMANDABLE	**₱28,645,421.74**

In a letter dated December 16, 2007, addressed to Jose N. Tan, CESO V, Regional Director, BIR Region No. 13, Cebu City, petitioner MCWD requested for reconsideration of the afore-stated FLD. Said letter was received by the Office of the Regional Director, BIR Regional Office No. 13, Cebu City on **December 27, 2007.**[9]

[4] II(A)(3), Facts, Pre-Trial Order, *CTA Docket*, p. 499.
[5] I(5), Joint Stipulations of Facts, *CTA Docket*, p. 200.
[6] II(A)(16), Pre-Trial Order, *CTA Docket*, p. 500.
[7] Exhibit "N", *CTA Docket*, pp. 403 to 404; Exhibit "7", *BIR Records*, pp. 496 to 497.
[8] Exhibits "8", "9", "10", *BIR Records*, pp. 498 to 500.
[9] Annex "D", Petition for Review, *CTA Docket*, pp. 46 to 47; Annex "A", Joint Stipulations of Facts, *CTA Docket*, pp. 204 to 205.

On July 7, 2010, petitioner MCWD received the CIR's Decision[10] dated June 2, 2010 which finds no merit on petitioner MCWD's request for reconsideration (protest) and which further states that for petitioner MCWD's failure to file its protest on time, the assessments became final, executory and demandable.

On August 5, 2010, petitioner MCWD sent by registered mail a Petition for Review to this Court.[11] In a letter[12] dated August 24, 2010, the Court's Executive Clerk of Court III informed petitioner MCWD that it is required to pay the corresponding legal fees in order that the petition may be considered filed before the Court. On September 13, 2010, petitioner MCWD filed by registered mail a Manifestation and enclosed therewith the payment for the assessed filing and docket fees.[13] The Court received the Manifestation with the attached payment on September 23, 2010.

In her Answer,[14] respondent CIR raised the following special and affirmative defenses:

a) The Court did not acquire jurisdiction over the petition for review as the petition for review was filed beyond thirty (30) days from July 7, 2010, when petitioner MCWD received the CIR's Decision dated June 2, 2010. Petitioner MCWD's petition for review was filed only on September 23, 2010 or forty eight (48) days after the expiration of the thirty-day period provided by law;

b) Petitioner MCWD was afforded due process in the assessment of its tax liabilities with the issuance of the Post Reporting Notice dated June 13, 2006, Revised Assessment Notice dated May 3, 2007, Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated July 4, 2007, Amended PAN with attached Details of Discrepancies dated August 24, 2007, Formal Letter of Demand (FLD) with attached Assessment Notices and Details of Discrepancies dated November 16, 2007;

c) Petitioner MCWD's refusal to abide by the procedure has rendered the assessment final, executory and demandable; and,

d) The assessments were issued in accordance with law, rules, jurisprudence and applicable revenue issuances.

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[10] Annex "E", Petition for Review, *CTA Docket*, pp. 59 to 64; Annex "B", Joint Stipulations of Fact, *CTA Docket*, pp. 206 to 211.
[11] *CTA Docket*, pp. 11 to 30.
[12] *CTA Docket*, pp. 1 to 2.
[13] *CTA Docket*, pp. 4 to 9.
[14] *CTA Docket*, pp. 119 to 132.

After the Pre-Trial Conference on April 1, 2011,[15] the parties filed their Joint Stipulations of Facts[16] on July 19, 2011, Supplemental Joint Stipulations of Facts[17] on August 16, 2011 and Revised Supplemental Joint Stipulation of Facts[18] on November 18, 2011.

On June 21, 2012, the Court issued the Pre-Trial Order[19] which summarized the facts and issues stipulated by the parties, the evidence to be presented and the hearing dates. The Pre-Trial Order states that the pre-trial is deemed terminated.

During trial, the parties presented and formally offered their respective witnesses and documentary evidence in support of their respective claims and contentions. The case was submitted for decision on December 3, 2013,[20] after the filing of the parties' respective Memoranda[21] on September 16, 2013.

THE ISSUES

The parties submitted the following issues for the Court's resolution:[22]

1. Whether or not petitioner MCWD is liable to pay the aggregate amount of ₱28,645,421.74 for deficiency franchise tax, VAT and compromise penalty for the taxable year 2003 plus increment thereon until the actual date of payment as stated in the Formal Letter of Demand dated November 16, 2007;

2. Whether or not the BIR is estopped from denying the full payment of the compromise penalty of forty percent (40%) of the franchise tax for the year 2003;

3. Whether or not the assessments were issued in accordance with law, rules and jurisprudence; and,

4. Whether or not the deficiency tax assessments are supported by factual and legal bases.

[15] *CTA Docket*, p. 150.
[16] *CTA Docket*, pp. 199 to 203.
[17] *CTA Docket*, pp. 239 to 244.
[18] *CTA Docket*, pp. 252 to 255.
[19] *CTA Docket*, pp. 498 to 515.
[20] Resolution dated December 3, 2013, *CTA Docket*, p. 713.
[21] *CTA Docket*, pp. 639 to 649 and pp. 654 to 674.
[22] II(B), Issues, Pre-Trial Order, *CTA Docket*, pp. 502 to 503.

THE COURT'S RULING

This Court shall first determine whether it has jurisdiction to entertain the subject Petition for Review. Well-settled is the rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law and not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[23]

As for the jurisdiction of this Court on internal revenue tax assessments, Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA No. 9282 provides:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

Before this Court can exercise its jurisdiction on a case brought before it, the Court has to resolve whether the appeal was filed on time. In this regard, Section 11 of RA No. 1125, as amended by RA No. 9282, states that:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

[23] Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals, G. R. No. L-23988, January 2, 1968.

> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon xxx xxx xxx." *(Emphases supplied)*

Corollary, Section 228 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, explicitly states that a final decision of the CIR on disputed assessments must be appealed to this Court within thirty (30) days from receipt of said decision; otherwise the decision shall become final, executory and demandable, *viz.*:

> "**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, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> 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.
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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.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**." *(Emphases supplied)*

In the present case, petitioner MCWD received the CIR's Decision dated June 7, 2010 (which denied its motion for reconsideration/protest against the FLD) on July 7, 2010. Thus, petitioner had thirty (30) days from July 7, 2010 or until August 6, 2010 within which to appeal respondent CIR's Decision before this Court. As afore-stated, on August 5, 2010, petitioner MCWD sent by registered mail a Petition for Review to this Court and requested for exemption from the payment of filing fees, citing Section

46 of PD No. 198.[24] Citing Section 22 of Rule 141 of the Rules of Court and A.M. No. 05-10-20-SC dated March 10, 2010, among others, the Court (through its Executive Clerk of Court III) informed petitioner that it is required to pay the corresponding legal fees within ten (10) days from notice in order that the present Petition for Review may be considered filed before this Court.[25] On September 13, 2010, petitioner MCWD filed by registered mail a Manifestation and enclosed therewith the payment for the assessed filing and docket fees.[26]

Consistent with Section 1, Rule 141 of the Rules of Court which provides that the prescribed fees shall be paid in full "upon filing of the pleading or other application which initiates an action or proceeding", the rule is well-settled that a case is deemed filed only upon payment of the docket fee regardless of the actual date of its filing in court.[27] In *Home Guaranty Corporation v. R-II Builders Inc., and National Housing Authority*,[28] the Supreme Court explained that:

> "Jurisdiction is defined as the authority to hear and determine a cause or the right to act in a case. In addition to being conferred by the Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted. **Consistent with Section 1, Rule 141 of the Revised Rules of Court which provides that the prescribed fees shall be paid in full "upon the filing of the pleading or other application which initiates an action or proceeding", the well-entrenched rule is to the effect that a court acquires jurisdiction over a case only upon the payment of the prescribed filing and docket fees.**" *(Emphasis supplied)*

Of course, the Court is aware that if the correct amount of docket fees are not paid at the time of filing, it may still acquire jurisdiction upon full payment of the fees within a reasonable time as it may grant, barring prescription.[29] The "prescriptive period" that bars the payment of the docket fees refers to the period in which a specific action must be filed, so that in

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[24] Payment of Docket Fees, Petition for Review, *CTA Docket*, p. 13.
[25] Letter dated August 24, 2010, *CTA Docket*, pp. 1 to 2.
[26] *CTA Docket*, pp. 4 to 9.
[27] Mario Rodis Magaspi, et al. v. Honorable Jose R. Ramolete, G.R. No. L-34840, July 20, 1982.
[28] G.R. No. 192649, March 9, 2011. *Citations omitted.*
[29] *Cf.* Fedman Development Corporation v. Frederico Agcaoili, G.R. No. 165025, August 31, 2011 *citing* Ballatan v. Court of Appeals, G.R. No. 125683, March 2, 1999, 304 SCRA 34; *citing* Tacay v. RTC of Tagum, Davao del Norte, G.R. No. 88075-77, December 20, 1989, 180 SCRA 433, 444; Sun Insurance Office, Ltd. (SIOL) v. Asuncion, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

every case, the docket fees must be paid before the lapse of the prescriptive period, as provided in the applicable laws.[30] In *Sun Insurance Office, Ltd., et al. v. Hon. Maximiano C. Asuncion, et al.,*[31] the Supreme Court laid down the following rule on the jurisdictional effects of the non-payment of correct and proper docket fees:

> "1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, **the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.**
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> 2. The same rule applies to permissive counterclaims, third party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. **The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.**
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> 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee." (*Emphases supplied*)

When petitioner MCWD sent by registered mail the subject Petition for Review on August 5, 2010, *sans* payment of the prescribed filing and docket fees, it has by law and jurisprudence, only until August 6, 2010 to pay the same. As afore-stated, it was only on September 13, 2010 when petitioner MCWD paid the assessed filing and docket fees. Hence, the subject Petition for Review is deemed to have been filed only on September 13, 2010, or thirty eight (38) days beyond the August 6, 2010 deadline.

The subject Petition for Review should have been filed within the thirty-day reglementary period as provided for in Section 228 of the 1997 NIRC, as amended and Section 11 of RA No. 1125, as amended by RA No. 9282. Needless to say, the thirty (30) day period is jurisdictional.[32] In

[30] *Id. citing* Central Bank of the Philippines v. Court of Appeals, G.R. No. 88353, May 8, 1992, 208 SCRA 652; Pantranco North Express, Inc. v. Court of Appeals, G.R. No. 105180, July 5, 1993, 224 SCRA 477.
[31] G.R. Nos. 79937-38, February 13, 1989.
[32] Commissioner of Internal Revenue v. Western Pacific Corporation, G.R. No. L-18804, May 27, 1965 *citing* Pangasinan Transportation Co. vs. Blaquera, L-13101, April 29, 1960.

Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue,[33] the Supreme elucidated the consequence of the taxpayer's failure to appeal the BIR's adverse decision to this Court within the thirty-day period, *viz.*:

> "Here, petitioner failed to avail of its right to bring the matter before the Court of Tax Appeals within the reglementary period upon the receipt of the demand letter reiterating the assessed delinquent taxes and denying its request for reconsideration which constituted the final determination by the Bureau of Internal Revenue on petitioner's protest. Being a final disposition by said agency, the same would have been a proper subject for appeal to the Court of Tax Appeals.
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> The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.
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> We agree with the factual findings of the Court of Tax Appeals that the demand letter may be presumed to have been duly directed, mailed and was received by petitioner in the regular course of the mail in the absence of evidence to the contrary. This is in accordance with Section 2(v), Rule 131 of the Rules of Court, and in this case, since the period to appeal has commenced to run from the time the letter of demand was presumably received by petitioner within a reasonable time after January 24, 1991, **the period of thirty (30) days to appeal the adverse decision on the request for reconsideration had already lapsed when the petition was filed with the Court of Tax Appeals only on November 8, 1991. Hence, the Court of Tax Appeals properly dismissed the petition as the tax delinquency assessment had long become final and executory**." *(Emphasis supplied)*

Moreover, in **Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,**[34] the Supreme Court reiterated that:

> "As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.
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> In *Ker & Company, Ltd. v. Court of Tax Appeals*, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, **nevertheless the requirement that it must be brought within 30 days is**

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[33] G.R. No. 148380, December 9, 2005.
[34] G.R. No. 168498, April 24, 2007.

> **jurisdictional**. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.
>
> In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment. *(Emphasis supplied; Citations omitted)*

The failure of petitioner MCWD to perfect an appeal within thirty (30) days from receipt of the CIR's Decision rendered the same final, executory and demandable thus depriving this Court of its jurisdiction to take cognizance of the subject Petition for Review which assails the said CIR's Decision.

Assuming *arguendo* that the subject Petition for Review was filed on time, still, this Court does not have jurisdiction to entertain the appeal and determine the validity and correctness of the assessments as the same had already attained finality.

Records reveal that petitioner MCWD received the FLD with attached assessment notices and details of discrepancies on <u>November 16, 2007</u>. Petitioner MCWD requested for reconsideration of the afore-stated FLD by filing a letter addressed to Jose N. Tan, CESO V, Regional Director, BIR Region No. 13, Cebu City, on <u>December 27, 2007</u>, albeit the letter-request for reconsideration was dated December 16, 2007.

Pursuant to Section 228 of the 1997 NIRC, as amended, and Section 3.1.5[35] of Revenue Regulations No. 12-99, a taxpayer has thirty (30) days

[35] "3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. Xxx xxx xxx.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

from receipt of the assessment notice within which to file a valid protest and the failure of a taxpayer to file a protest on time against the assessment renders the assessment final, executory, and demandable.

To be sure, once an assessment attains finality, the taxpayer is thereby precluded from disputing the correctness of the assessment. It can no longer seek judicial relief from this Court because the assessment is beyond judicial review.

Since petitioner MCWD failed to file its protest against the FLD (with attached assessment notices and details of discrepancies) within the thirty (30)-day period, the deficiency franchise tax, VAT and compromise penalty assessments issued against petitioner MCWD for the taxable year 2003, in the total amount of ₱28,645,421.74, had become final, executory and demandable. Consequently, this Court has no jurisdiction to take cognizance of the case as said assessments are no longer appealable under Section 7 of RA No. 1125, as amended by RA No. 9282.

On the basis of the foregoing, the dismissal of the subject Petition for Review is, therefore, warranted. The remaining stipulated issues need not be discussed in view of the foregoing disquisitions.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. (RR No. 12-99)

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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