REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JG SUMMIT HOLDINGS, INC.,
Petitioner,

CTA CASE NO. 9147

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 12 2020
4:30 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by JG Summit Holdings, Inc. (**JGSHI/petitioner**) pursuant to Rule 8, Section 3(a)[2] of the Revised

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[1] Filed 18 September 2015, Division Docket, Volume I, pp. 10-39.

[2] **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 [R]evenue 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.

Rules of the Court of Tax Appeals (**RRCTA**), seeking the reversal of the Revised Final Decision on Disputed Assessment (**RFDDA**) dated 20 August 2015[3] of respondent Commissioner of Internal Revenue (**CIR/respondent**). The RFDDA found petitioner liable for deficiency income tax (**IT**) in the amount of FIVE HUNDRED EIGHTY-ONE MILLION NINE HUNDRED ONE THOUSAND FIVE HUNDRED FIFTY-FIVE PESOS AND NINETY CENTAVOS (**₱581,901,555.90**), deficiency value-added tax (**VAT**) in the amount of TWO HUNDRED TWO MILLION SIX HUNDRED TWENTY-TWO THOUSAND ONE HUNDRED SEVENTY PESOS AND EIGHTY-NINE CENTAVOS (**₱202,622,170.89**), and deficiency documentary stamp tax (**DST**) in the amount of FIVE HUNDRED FIFTY-FIVE MILLION THREE HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED SIXTY PESOS AND NINETEEN CENTAVOS (**₱555,329,660.19**).

PARTIES OF THE CASE

Petitioner JGSHI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 43rd floor, Robinsons Tower, ADB Avenue corner Poveda Road, Ortigas Center, Brgy. San Antonio, Pasig City.

Respondent CIR, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to administer and enforce internal revenue laws; including, among others, the power to issue tax assessments. He holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, Diliman, Quezon City.

FACTUAL ANTECEDENTS

On 14 May 2010, respondent issued Letter of Authority[4] (**LOA**) No. LOA-127-2010-00000012, authorizing Revenue Officers (**ROs**) Ma. Salud Maddela, Allan Maniego, Myrna Ramirez, Joel Aguila, Zenaida Paz, Cletofel Parungao, and Group Supervisor (GS) Glorializa Samoy to examine petitioner's books and records.

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[3] Exhibit "R-17", BIR Records, pp. 1361-1372.
[4] Exhibit "R-1", id., p. 1.

Thereafter, petitioner executed a Waiver of the Defense of Prescription[5] (**WDP/first WDP**) on 02 April 2012 extending the respondent's right to assess petitioner until 31 December 2012. Petitioner executed another WDP[6] (**second WDP**) on 07 December 2012, extending the period of assessment until 31 December 2013.

On 16 January 2013, petitioner received a copy of the Notice of Informal Conference[7] (NIC) with the BIR finding petitioner liable for deficiency IT, VAT, DST, withholding tax on compensation (**WTC**), expanded withholding tax (**EWT**), final withholding tax (**FWT**) on dividends, and improperly accumulated earnings tax (**IAET**) in the aggregate amount of FIVE BILLION FORTY-TWO MILLION NINETY-ONE THOUSAND SEVEN HUNDRED NINETY-SEVEN PESOS AND NINETEEN CENTAVOS (**₱5,042,091,797.19**).

Still thereafter, on 09 October 2013, petitioner executed yet another WDP[8] (**third WDP**) extending the respondent's right to assess until 30 June 2014, which respondent accepted on 12 December 2013. In the meantime, on 04 November 2013, petitioner received a Preliminary Assessment Notice[9] (**PAN**) adjusting its tax liabilities to FIVE BILLION EIGHT HUNDRED FORTY MILLION ONE HUNDRED EIGHTY THOUSAND NINE HUNDRED FIFTY-SEVEN PESOS AND TWENTY-THREE CENTAVOS (**₱5,840,180,957.23**).

On 27 February 2014, petitioner received a copy of respondent's Final Assessment Notice (**FAN**) and Formal Letter of Demand[10] (**FLD**) signed by CIR Kim Jacinto-Henares[11] (**CIR Henares**), finding petitioner liable for deficiency taxes, inclusive of increments amounting to SIX BILLION ONE MILLION SEVENTY-FIVE THOUSAND FORTY-SIX PESOS AND FOURTEEN CENTAVOS (**₱6,001,075,046.14**).

On 12 March 2014, petitioner filed its protest[12] to the FLD with a request for investigation. On **<u>05 December 2014</u>**, petitioner received

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5 Exhibit "R-2", id., p. 767.
6 Exhibit "R-3", Division Docket, Volume V, p. 2036.
7 Exhibit "R-5", BIR Records, pp. 823-836.
8 Exhibit "R-4", id., pp. 767H-767I.
9 Exhibit "R-7", id., pp. 880-892.
10 Exhibit "R-9", id., pp. 928 938.
11 Exhibit "R-9-a", id., p. 935.
12 Exhibit "R-12", id., pp. 973-987.

respondent's Final Decision on Disputed Assessment[13] (**FDDA**), reiterating the latter's previous findings, and now holding petitioner liable for tax liabilities including increments in the amount of SIX BILLION FIVE HUNDRED FORTY-SIX MILLION TWO HUNDRED SIX THOUSAND SEVEN HUNDRED SIXTY-THREE PESOS AND THIRTY-TWO CENTAVOS (**₱6,546,206,763.32**).

On 22 December 2014, petitioner filed a request for reconsideration[14] with respondent CIR. On 20 August 2015, respondent denied petitioner's request through the assailed RFDDA[15], wherein petitioner was still held liable for deficiency IT, VAT, DST and IAET. However, respondent acknowledged petitioner's payment in *interim* of its deficiency WTC, EWT and FWT.

Aggrieved by respondent's actions, petitioner appealed its case before this Court *via* the present Petition for Review, filed on **18 September 2015**.

PROCEEDINGS BEFORE THE FIRST DIVISION

On 22 October 2015, petitioner filed its Amended Petition for Review.[16] In a Resolution dated 02 November 2015[17], the Court admitted petitioner's amended petition and ordered respondent to file its Answer thereto within fifteen (15) days from receipt of such order. On 18 January 2016, respondent filed its Answer[18] through registered mail after the Court granted his motion for an extension of time to file the same. Thereafter, on 14 March 2016[19] and 11 March 2019[20], respectively, petitioner and respondent submitted their Pre-Trial Briefs.

Subsequently or on 06 April 2016, the parties submitted their Joint Stipulation of Facts and Issues (JSFI). During the pre-trial

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13 Exhibit "R-14", id., pp. 1066-1077.
14 Exhibit "R-16", id., pp. 1292-1302.
15 Exhibit "R-17", supra at note 3.
16 Division Docket, Volume I, pp. 138-170.
17 Id., p. 260.
18 Id., pp. 280-315.
19 Id., pp. 400-408.
20 Id., pp. 371-377.

conference[21], both parties agreed to adopt the sole issue raised by petitioner in its Pre-Trial Brief[22], that is – whether petitioner is liable to pay its assessed deficiency IT, VAT, DST, and IAET, plus 50% surcharge, 20% deficiency and delinquency interest pursuant to Sections 248[23] and 249[24] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Trial thereafter ensued where petitioner presented the testimony of the following witnesses: (1) Atty. Rosalinda F. Rivera (**Rivera**),

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[21] Id., pp. 415-418.

[22] See Resolution dated 08 April 2016, id., pp. 440-441.

[23] **Sec. 248.** *Civil Penalties.* -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[24] **Sec. 249.** *Interest.* -

(A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) *Interest on Extended Payment.* - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid.

petitioner's Corporate Secretary; (2) Michelle Abellanosa (**Abellanosa**), Vice President-Controller of petitioner; (3) Nicasio Lim (**Lim**), Administrative Manager of Gokongwei Brothers Foundation, Inc. (**GBF**); and, (4) Ria Anne P. Abanto (**Abanto**), the court-commissioned Independent Certified Public Accountant (ICPA).

On the witness stand, Rivera testified essentially on petitioner's status as a publicly-held corporation.[25] Lim testified on GBF's registration as a non-stock, non-profit corporation[26]; while, Abellanosa's testimony revolved around the circumstances regarding the assailed assessment and filing of the letter request for reconsideration with respondent.[27] On the other hand, Abanto attested to her findings and report on petitioner's tax liabilities.[28]

Thereafter, petitioner filed its Formal Offer of Evidence (**FOE**) on 02 February 2018.[29] On 05 April 2018,[30] the Court admitted petitioner's FOE and admitted its offered exhibits.[31]

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25 Exhibit "P-56", id., Volume II, pp. 856-864.
26 Id., pp. 822-827.
27 Exhibit "P-55", id., Volume III, pp. 932-946.
28 Exhibit "P-58", id., pp. 1398-1406.
29 Id., Volume IV, pp. 1543-1560.
30 Id., pp. 1955-1957.
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Exhibit **"P-1"**	- Amended Articles of Incorporation of JG Summit Holdings, Inc..
Exhibit **"P-2"**	- BIR Certificate of Registration No. OCN-8RC0000019333.
Exhibit **"P-3"**	- Letter of Authority No. LOA-127-2010-00000012 dated May 14, 2010.
Exhibit **"P-4"**	- Waiver of the Defense of Prescription Under the Statute of Limitations under the National Internal Revenue Code dated April 2, 2012.
Exhibit **"P-5"**	- Waiver of the Defense of Prescription Under the Statute of Limitations under the National Internal Revenue Code dated October 9, 2013.
Exhibit **"P-5-a"**	- The date of acceptance of the Waiver by the BIR.
Exhibit **"P-5-b"**	- The date of acceptance of the Waiver by the Petitioner.
Exhibit **"P-6"**	- Notice of Informal Conference.
Exhibit **"P-7"**	- Petitioner's letter to the BIR dated January 30, 2013.
Exhibit **"P-8"**	- Preliminary Assessment ("PAN").
Exhibit **"P-9"**	- Petitioner's written protest to the PAN dated November 19, 2013.
Exhibit **"P-10"**	- Formal Letter of Demand ("FLD").
Exhibit **"P-11"**	- Petitioner's written protest to the FLD dated March 12, 2014.
Exhibit **"P-12"**	- Petitioner's supplemental protest to the FLD dated May 6, 2014.
Exhibit **"P-13"**	- Final Decision on Disputed Assessment ("FDDA").
Exhibit **"P-14"**	- Payment Form (BIR Form No. 0605) for payment of withholding tax on compensation in the amount of PhP4,770,654.17.
Exhibit **"P-15"**	- Payment Form (BIR Form No. 0605) for payment of final tax in the amount of PhP25,739,175.84.
Exhibit **"P-16"**	- Payment Form (BIR Form No. 0605) for payment of EWT in the amount of PhP2,259,565.51.
Exhibit **"P-17"**	- Petitioner's Request for Reconsideration dated December 22, 2014.
Exhibit **"P-18"**	- Revised FDDA.
Exhibit **"P-19"**	- Breakdown of DST Payments.
Exhibit **"P-20"**	- Audited Financial Statements of Petitioner for 2008.

Exhibit **"P-21"**	- BIR Form No. 2000 filed through eFPS on December 1, 2009 with Payment Details.
Exhibit **"P-22"**	- Audited Financial Statements of Petitioner for 2009.
Exhibit **"P-23"**	- Philippine Stock Exchange ("PSE") Certification issued on March 8, 2016.
Exhibit **"P-24"**	- Letter of Petitioner's Corporate Secretary to the PSE with the list of Petitioner's stockholders or record as of December 31, 2009 attached.
Exhibit **"P-24-a"**	- Signature of Rosalinda F. Rivera, Corporate Secretary of Petitioner.
Exhibit **"P-28"**	- Petitioner's Income Tax Return for 2009.
Exhibit **"P-28-a"**	- Electronically generated date of filing of the Income Tax Return.
Exhibit **"P-29"**	- Petitioner's Quarterly VAT Return for the 1st quarter of 2009.
Exhibit **"P-2-a"**	- Petitioner's Quarterly VAT Return for the 2nd quarter of 2009.
Exhibit **"P-29-b"**	- Petitioner's Quarterly VAT Return for the 3rd quarter of 2009.
Exhibit **"P-29-c"**	- Petitioner's Quarterly VAT Return for the 4th quarter of 2009.
Exhibit **"P-30"**	- Letter of Petitioner's Corporate Secretary to the PSE with the list of Petitioner's stockholders of record as of December 31, 2010 attached.
Exhibit **"P-30-a"**	- Signature of Rosalinda F. Rivera, Corporate Secretary of Petitioner .
Exhibit **"P-31"**	- Amended Articles of Incorporation of Gokongwei Brothers Foundation, Inc. ("GBF").
Exhibit **"P-32"**	- GBF's General Information Sheet for the year 2009.
Exhibit **"P-33"**	- GBF's General Information Sheer for the year 2009.
Exhibit **"P-34"**	- List of GBF beneficiaries for the year 2009.
Exhibit **"P-35"**	- List of GBF beneficiaries for the year 2010.
Exhibit **"P-55"**	- Affidavit in Lieu of Direct Examination of Ms. Michele Abellanosa dated April 18, 2016.
Exhibit **"P-55-a"**	- Signature of Ms. Michele Abellanosa.
Exhibit **"P-56"**	- Affidavit in Lieu of Direct Examination of Atty. Rosalinda F. Rivera.
Exhibit **"P-56-a"**	- Signature of Atty. Rosalinda F. Rivera.
Exhibit **"P-57"**	- Affidavit in Lieu of Direct Examination of Mr. Nicasio L. Lim.
Exhibit **"P-57-a"**	- Signature of Mr. Nicasio L. Lim.
Exhibit **"P-64"**	- Supplemental Affidavit in Lieu of Direct Examination of Ms. Michele Abellanosa dated January 15, 2018.
Exhibit **"P-64-a"**	- Signature of Ms. Michele Abellanosa.
Exhibit **"P-58"**	Affidavit in Lieu of Direct Examination of Ms. Ria Anne P. Abanto dated November 10, 2016.
Exhibit **"P-58-a"**	- Signature of Ms. Ria Anne P. Abanto.
Exhibit **"P-54"**	- Amended and Final Independent Certified Public Accountant (ÏCPA") Report dated June 29, 2016 with supporting annexes, summaries, and schedules
Exhibit **"P-54-a"**	- Signature of Ms. Ria Anne P. Abanto.
Exhibit **"P-61"**	- Supplemental Affidavit in Lieu of Direct Examination of Ms. Ria Anne P. Abanto dated January 16, 2018.
Exhibit **"P-61-a"**	- Signature of Ms. Ria Anne P. Abanto.
Exhibit **"P-62"**	- Supplemental ICPA Report dated January 12, 2018 with supporting annexes, summaries, and schedules.
Exhibit **"P-62-a"**	- Signature of Ms. Ria Anne P. Abanto.
Exhibit **"P-40"**	- General ledger on interest expense on loan from affiliates and banks.
Exhibit **"P-41"**	- Schedule of Bank Promissory Notes on Short-term borrowings.
Exhibit **"P-41-01 to P-41-11"**	- Bank Promissory Notes on Short-term borrowings and Corresponding Bank Certifications.
Exhibit **"P-42.1 to P-42.227"**	- Bank Statements.
Exhibit **"P-43"**	- Schedule of loan amortization on short-term borrowings.
Exhibit **"P-43-01"**	- Loan amortization on short-term borrowings. l
Exhibit **"P-44"**	- Schedule of Long-term Debt Loan Agreements.
Exhibit **"P-44-01 to P-44-04"**	- Long-term Debt Agreements.
Exhibit **"P-45"**	- Schedules of loan amortization on long-term debt.
Exhibit **"P-45-01"**	- Loan amortization on long-term debt.
Exhibit **"P-46"**	- Schedule of interest amortization on loan from affiliates.

On 02 October 2018, the present case was transferred to this Court's Second Division pursuant to CTA Administrative Circular No. 02-2018 which reorganized the three divisions of this Court.

PROCEEDINGS BEFORE THE SECOND DIVISION

When the trial proceedings continued, respondent proferred the testimony of his sole witness, RO Joel M. Aguila (Aguila) who essentially testified about the conduct of the assessment and the issuances of the CIR relating thereto. Thereafter, respondent filed his FOE on 28 January 2019. On 03 May 2019,[32] the Court also admitted respondent's exhibits.[33] The Court further ordered the parties to

Exhibit **"P-47"**	- General ledger of interest income on loan to affiliates.
Exhibit **"P-48"**	- Schedule of interest income on loan to affiliates.
Exhibit **"P-48-01 to P-48-04"**	- Amortization of interest income on loan to affiliates.
Exhibit **"P-49"**	- Related parties' check vouchers, request for payments/advances manifold and other related documentations.
Exhibit **"P-50-01"**	- Documentary Stamp Tax Declaration/Return 2000.
Exhibit **"P-51"**	- General ledger of interest expense on preferred shares.
Exhibit **"P-52"**	- Schedule of Secretary Certificate on declaration of cash dividends on common shares.
Exhibit **"P-52-01"**	- Secretary Certificate on declaration of cash dividends on common shares.
Exhibit **"P-53"**	- Schedule of Board Resolutions on Appropriation of Retained Earnings.
Exhibit **"P-53-01"**	- Board Resolutions on Appropriation of Returned Earnings.
Exhibit **"P-59.01 to P-59-.239"**	- Supporting documents for statements of loan obligations.
Exhibit **"P-60.01 to P-60.101"**	- Supporting documents for providing support to capital expenditure commitments.

32 Id., Volume V, pp. 2061-2062.

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Exhibit "R-1"	- Letter of Authority LOA-127-2010-00000012 dated May 14, 2010.
Exhibit "R-2"	- "Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" notarized on April 12, 2012
Exhibit "R-3"	- "Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" executed on 7 December 2012.
Exhibit "R-4"	- "Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" executed on 9 October 2013.
Exhibit "R-5"	- Notice of Informal Conference with attached Briefer and Details of Discrepancies.
Exhibit "R-6"	- Memorandum dated 26 September 2013.
Exhibit "R-7"	- Preliminary Assessment Notice with attached Details of Discrepancies.
Exhibit "R-8"	- Memorandum dated 6 January 2014.
Exhibit "R-9"	- Formal Letter of Demand (FLD) dated 27 February 2014 with attached Details of Discrepancies.
Exhibit "R-9-a"	- On the last page of the Formal Letter of Demand, signature over the name KIM S. JACINTO-HENARES, Commissioner of Internal Revenue.
Exhibit "R-10"	- Audit Result/Assessment Notice (BIR Form No. 0401).
Exhibit "R-11"	- Affidavit of Service of Final Letter of Demand executed on 27 February 2014.

submit their respective memoranda within thirty (30) days from receipt of such order.

On 17 June 2019, respondent filed a Manifestation[34] adopting the Answer in *lieu* of filing a memorandum. After being granted an extension of time, petitioner filed its Memorandum[35] on 15 July 2019. On 29 July 2019[36], the case was deemed submitted for decision.

ISSUE

As stated previously[37], the parties agreed for the resolution of this sole issue –

> WHETHER PETITIONER IS LIABLE TO PAY ITS ASSESSED DEFICIENCY INCOME TAX, VALUE-ADDED TAX, DOCUMENTARY STAMP TAX, AND IMPROPERLY ACCUMULATED EARNINGS TAX, PLUS 50% SURCHARGE, 20% DEFICIENCY AND DELINQUENCY INTEREST PURSUANT TO SECTIONS 248 AND 249 OF THE NIRC OF 1997, AS AMENDED.

ARGUMENTS IN SUPPORT OF THE ISSUE

Firstly, petitioner insists on the timely filing of the present Petition for Review. It contends that the 30-day reglementary period for filing an appeal with the Court should begin to run from its receipt of the RFDDA dated 20 August 2015.

Exhibit "R-12"	- Letter dated 12 March 2014.
Exhibit "R-13"	- Memorandum dated 28 October 2014.
Exhibit "R-14"	- Final Decision on Disputed Assessment with attached Details of Discrepancies.
Exhibit "R-14-a"	- On the last page of the Final Decision on Disputed Assessment (FDDA), signature over the name KIM S. JACINTO-HENARES, Commissioner of Internal Revenue.
Exhibit "R-15"	- Audit Result/Assessment Notice (BIR Form No. 0401).
Exhibit "R-16"	- Request for Reconsideration of the FDDA.
Exhibit "R-17"	- Revised Final Decision on Disputed Assessment with attached Details of Discrepancies.

34 Id., p. 2069.
35 Id., pp. 2073-2135.
36 Resolution, id., p. 2139.
37 Supra at p. 5.

Secondly, petitioner challenges the validity of respondent's assessment on the following grounds, to wit: (1) the assessment should be declared void due to absence of electronic Letter of Authority (eLOA); and, (2) the right to assess petitioner has already prescribed since the third WDP was executed after the expiration of the period agreed upon in a previous WDP.

Lastly, petitioner argues that, at any rate, respondent's findings are erroneous. It claims that: (1) respondent wrongfully disallowed its interest expense when the former claimed the same to be without factual and legal basis; (2) its interest income from loans to its affiliates are not subject to VAT since, petitioner is not a lending institution; (3) respondent in the RFDDA disallowed excess tax credits carried over to succeeding years, not covered by the assessment; (4) respondent's finding for deficiency DST are without factual and legal basis; and, (5) petitioner is not subject to IAET since it is a publicly-held corporation.

Expectedly, respondent claims the exact opposite. He alleges that this Court has no jurisdiction over petitioner's Petition for Review since petitioner's recourse to this Court has already prescribed. According to respondent, petitioner should have filed its Petition for Review with this Court within thirty (30) days from its receipt of the FDDA on <u>05 December 2014</u> and not from its receipt of the RFDDA on 20 August 2015.

Respondent also contends that, assuming this Court has jurisdiction, the BIR's right to assess petitioner had not yet prescribed since all the WDPs (entered between petitioner and the BIR) were validly executed. Respondent further maintains the correctness of the assessment deeming them to be enjoying the presumption of regularity.

<u>THE RULING OF THE COURT</u>

After an assiduous review of the case, the Court is constrained to dismiss the present Petition for Review for lack of jurisdiction.

As the records clearly show, petitioner's present Petition for Review was filed out of time. Section 228 of the NIRC of 1997, as amended, provides the manner for protesting assessments, to wit:

> ...
> **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...
> ....
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[38]
> ...

While Revenue Regulation (**RR**) 12-99, as amended[39], implementing the aforecited provision, outlines in detail the appeal process for disputed assessments:

> ...
> 3.1.5. *Disputed Assessment*. – The taxpayer or his duly authorized representative may protest administratively against the aforesaid

[38] Emphasis supplied.
[39] Issued on 14 September 1999 as amended by RR 13-2018 on 15 March 2018.

> formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof...
>
> ...
>
> 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.
>
> **If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.**
>
> **In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable.[40]
>
> ...

In applying these rules, the Supreme Court in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[41] **(PAGCOR)** and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[42] explained the three (3) options by which a taxpayer may appeal the denial of its protest, to wit:

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40 Emphasis supplied.
41 G.R. No. 208731, 27 January 2016.
42 G.R. No. 221780, 25 March 2019.

> ...
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> **1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.[43]
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules in the following wise:

> ...
> To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. **A whole or partial denial by the CIR may be appealed to the CTA.** The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[44]
> ...

As culled from the facts, petitioner's protest to the FAN and FLD was filed with then CIR Henares *not* before her authorized representative. The latter herself denied petitioner's protest through an FDDA which petitioner received on **<u>05 December 2014</u>**.[45] In line with the rules set forth in RR 12-99 and the decision in *PAGCOR*, the proper remedy for petitioner would have been to file a Petition for Review before this Court within thirty (30) days from receipt of the

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[43] Emphasis supplied.
[44] G.R. No. 208731, supra at note 41; Emphasis supplied.
[45] Signature of CIR Kim S. Jacinto-Henares on the final page of the FDDA, Exhibit "R-14-a", BIR Records, p. 1074.

FDDA or until 04 January 2015 (as the FDDA already served as respondent's denial of its protest). Unfortunately, petitioner opted to instead file a request for reconsideration with CIR Henares on 22 December 2014. Respondent maintained the denial of its protest through a RFDDA dated 20 August 2015.

With the procedure of appeal already clearly laid down, a resort to a request for reconsideration[46] (with the CIR) did not then toll the running of the reglementary period within which petitioner's appeal must be elevated to this Court. In *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[47] (**Fishwealth**), the Supreme Court held:

> ...
> In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.
>
> Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. **For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.**[48]
> ...

In *Fishwealth*, the taxpayer contested the CIR's assessment *via* a letter dated 23 September 2003. The CIR, in turn, issued an FDDA denying the taxpayer's protest which the latter received on 04 August 2005. Instead of elevating its case to the CTA, the taxpayer filed with the CIR a letter of reconsideration on 01 September 2005 which was considered denied due to a Preliminary Collection Letter (PCL) issued by the CIR on 06 September 2005. The taxpayer eventually filed its Petition for Review with the CTA on 20 October 2005 which was dismissed for being filed out of the 30-day reglementary period provided for in the NIRC of 1997, as amended, and RR 12-99.[49]

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[46] Supra at note 14.
[47] G.R. No. 179343, 21 January 2010.
[48] Emphasis supplied and underscoring in the original text.
[49] Supra at note 47.

The Court finds petitioner in a similar position. In relying on the possibility that respondent CIR might reconsider her previous decision, petitioner waived its remedy of appeal before this Court. Whether the same be due to inadvertence or purposely resorted to, the Court cannot ignore that, since its receipt of the FDDA, **more than nine (9) months have already lapsed from petitioner's receipt of the respondent's final decision before it raised its case on appeal before this Court.** Given the amount of time that had passed, this Court's lack of jurisdiction to entertain the present Petition for Review becomes indisputable.

In insisting that CIR Henares herself specifically indicated in the RFDDA that the decision may still be raised on appeal with this Court hence, petitioner also quotes:

> ...
> It is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties. This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeal (sic) or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from date of receipt hereof.[50]
> ...

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.[51] **Thus, the limits of this Court's jurisdiction is unaffected by the parties' erroneous interpretation of the law.** If the Court were to deem that the CIR provided another remedy of request for reconsideration, this will be inconsistent with the Supreme Court's declaration in *PAGCOR*. Likewise, in *Fishwealth*, where the Supreme Court held that the same will not toll the running of the appeal period to the CTA. Such interpretation would also be inconsistent with the BIR's own RR 12-99.

Moreover, the cited portion of the RFDDA likewise appears in the FDDA:[52]

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50 Exhibit "R-17", supra, p. 1370.
51 *Padlan v. Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.
52 Exhibit "R-14", supra at note 13.

> ...
>
> It is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties. This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeal[s] or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from date of receipt hereof.
>
> ...

In other words, the wordings of CIR's denial of petitioner's request could not amend or alter what is provided in the law. Therefore, petitioner could only be deemed to have already been notified (by respondent) as early as 05 December 2014[53] regarding the remedies available to it. Petitioner made its choice and could not now avoid the consequences of such choice.

In *Foronda-Crystal v. Son*[54], the Supreme Court aptly stated - "**in law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.**" In thus losing our authority to review respondent's *final* decision, the Court finds it unnecessary to further discuss the parties' other raised issues.

WHEREFORE, the foregoing considered, petitioner's Amended Petition for Review dated 22 October 2015 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[53] Supra at note 13.
[54] G.R. No. 221815, 29 November 2017.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice