REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

LIGHT RAIL TRANSIT AUTHORITY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8746

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 17 2018
11:27 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This resolves the Petition for Review filed by Light Rail Transit Authority which prays for the Court to declare the Final Decision on Disputed Assessment (FDDA) dated October 24, 2013 covering the assessment for taxable year 2008 void and without legal effect; and to direct the Commissioner of Internal Revenue or any of his duly authorized representatives to withdraw and/or cancel the assessment covering taxable year 2008 as contemplated in the said FDDA.

THE FACTS

Petitioner Light Rail Transit Authority is a government instrumentality organized and existing by virtue of Executive Order No. 603.[1]

[1] Docket, vol. I, p. 451, par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF).

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

A Notice of Informal Conference signed by Officer-in-Charge (OIC) Revenue Officer Corazon Montes with accompanying computation sheet was received by petitioner;[2] and an Informal Conference was conducted on June 8, 2011.[3]

Respondent later issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies dated December 22, 2011 and received by petitioner on the same date, covering deficiency value-added tax (VAT) and percentage tax assessments for taxable year 2008.[4]

Subsequently, respondent, through Regional Director Nestor S. Valeroso, issued a Formal Assessment Notice (FAN)[5] dated January 19, 2012 to petitioner for taxable year 2008; which petitioner protested on March 6, 2012.[6]

In an undated letter received by petitioner on July 8, 2013, the OIC Revenue Officer stated that without the supporting documents, the justifications made by petitioner are, at best, self-serving. The OIC Revenue Officer further requested the petitioner to submit additional documents.[7]

Petitioner thereafter received the FDDA dated October 24, 2013 on November 7, 2013.[8]

Petitioner then filed the instant Petition for Review by registered mail on December 6, 2013 and received by this Court on December 11, 2013.[9]

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[2] *Id.*, par. 3.
[3] *Id.*, par. 4.
[4] *Id.*, par. 5.
[5] *Id.*, p. 452, par. 6; Exhibit "R-5", BIR Records, pp. 269-273.
[6] *Id.*, par. 7; Exhibit "R-6", BIR Records, pp. 288-290.
[7] *Id.*, par. 8.
[8] *Id.*, par. 9.
[9] *Id.*, pp. 7-16, Petition for Review.

Respondent, for his part, filed the Answer to the Petition for Review[10] on April 11, 2014, interposing the following special and affirmative defenses:

> "9. The assessments in question were made and issued in accordance with law, rules and regulations;
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> 10. The Honorable Court has no jurisdiction to take cognizance of the case on the ground that Formal Assessment Notice dated January 19, 2012 had long become final and executory.
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> 11. As provided in Section 228 of the Tax Code of 1997, as amended, as implemented by Section 3.1.5 of Revenue Regulations No. 12-99, the failure of a taxpayer to file a timely protest against the assessment renders the assessment final, executory, and unappealable. Once the assessment attains finality, the taxpayer is already precluded from disputing the correctness of the assessment. Hence, petitioner can no longer seek judicial relief from this Honorable Court because the assessment is already final, executory, and unappealable. Consequently, it is now beyond judicial review **(Maersk Logistics Filipinas, Inc. vs. The Commissioner of Internal Revenue, et. al., CTA Case No. 7099, May 6, 2009)**.
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> 12. Since petitioner received the subject Formal Assessment Notice (FAN) on January 19, 2012, pursuant to Section 228 of the Tax Code of 1997, as amended, as implemented by Section 3.1.5 of Revenue Regulations No. 12-99, petitioner has thirty (30) days from January 19, 2012 or until February 18, 2012, within which to file an administrative protest. The fact that petitioner only filed its administrative protest on March 6, 2012, which is way beyond the 30-day period, the assessment had already become final, executory and demandable. This Honorable Court, therefore, has no jurisdiction to take cognizance of the case. Petitioner is already barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits **(Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 134062, April 17, 2007)**;
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> 13. The subsequent proceedings that led to the reopening/reinvestigation of the case through the issuance of the Final Decision on Disputed Assessment (FDDA) dated October

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[10] *Id.*, pp. 401-405.

24, 2013, produced no legal effect, being contrary to law and jurisprudence **(City of Makati vs. Commissioner of Internal Revenue, CTA Case No. 7809, December 16, 2009)**;

14. It follows, therefore, that the issuance of the FDDA dated October 24, 2013, produced no legal effect and did not revoke, amend or modify the FAN dated January 19, 2012, which had already become final, executory and demandable. Hence, said FDDA cannot be treated as decision of the respondent appealable to the Honorable Court.

15. It is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position **(Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation, 160 SCRA 560, 565 (1988)**. Hence, notwithstanding the issuance of FDDA dated October 24, 2013 by Regional Director Nestor S. Valeroso, the same shall not be interpreted to mean as the decision on the prostest, because there was no timely prostest filed, and cannot, therefore, be served as the basis of appeal via Petition for Review before the Honorable Court. Let it be stressed to the point of being repetitive, without a valid protest on the assessments in the admininstrative level, the assessment becomes final and the Court is deprived of any authority to rule on its validity **(Central Metro Trade Distributors, Inc. vs. Hon. Commissioner Guillermo T. Parayno, Jr., Hon. Estrella Martinez, CTA EB Case No. 179 [CTA Case No. 7171], January 3, 2007)**.

16. Moreover, the petition must be dismissed for lack of a valid verification and certification of non-forum shopping. A perusal of the petition readily shows that it does not contain any resolution of LRTA's Board of Directors authorizing Atty. Jose Jobel V. Belarmino to sign the verification and certification of non-forum shopping. In **Philippine Airlines vs. Flight Attendants and Stewards Association of the Philippines, G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608**, the Supreme Court ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. The action can be dismissed if the certification was submitted unaccompanied by proof of the signatory's authority;

17. Finally, all presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).**"

Subsequently, the Court set the Pre-Trial Conference on June 5, 2014[11], which was reset to July 10, 2014[12].

Petitioner and respondent submitted their Pre-Trial Briefs on May 29, 2014[13] and on June 4, 2014[14], respectively. The parties also filed their Joint Stipulation of Facts[15] on July 24, 2014.

A Pre-Trial Order[16] was issued on August 12, 2014, terminating the pre-trial of the case and setting the initial presentation of petitioners' evidence.

During the hearing held on February 16, 2015,[17] petitioner presented its witness, Mr. Nicolas G. Ombao, petitioner's Department Manager A, who testified on his Judicial Affidavit dated December 19, 2014[18]. Petitioner likewise presented Ms. Leilani H. Anonay, its Corporate Finance Services Chief, during the hearing held on July 27, 2015[19], who testified by way of Judicial Affidavit executed on July 15, 2015[20]. Petitioner also presented the testimony of Atty. Adan T. Delamide, the Independent Certified Public Accountant, during the hearing held on March 14, 2016[21], and by way of a Judicial Affidavit executed on January 28, 2016[22].

After presentation, marking, identification, and formal offer, the Court admitted Exhibits "1" to "P-1939" as petitioner's evidence, except for the following exhibits:[23]

1. Exhibits "P-2", "P-6", "P-9", "P-15", "P-15a", "P-15e", "P-15j", "P-15k", "P-15m", "P-15n", "P-15o", "P-15p", "P-15s", "P-15v", "P-15x" and "P-15y", for petitioner's failure to identify them during the trial;

[11] *Id.*, p. 407, Notice of Pre-Trial Conference dated April 14, 2014.
[12] *Id.*, p. 430, Resolution dated June 23, 2014.
[13] *Id.*, pp. 408-413, Petitioner's Pre-Trial Brief.
[14] *Id.*, pp. 422-427, Respondent's Pre-Trial Brief.
[15] *Id.*, pp. 451-457.
[16] *Id.*, pp. 466-471.
[17] *Id.*, vol. II, p. 511, Minutes of the hearing held on February 16, 2015.
[18] *Id.*, pp. 491-498.
[19] *Id.*, p. 611, Minutes of the hearing held on July 27, 2015.
[20] *Id.*, pp. 574-579, Exhibit "P-22".
[21] *Id.*, p. 854, Minutes of the hearing held on March 14, 2016.
[22] *Id.*, pp. 806-848, Exhibit "P-1939".
[23] *Id.*, vol. III, pp. 1213-1220, Resolution dated May 27, 2016.

2. Exhibits "P-10" and "P-18", for petitioner's failure to present the originals thereof for comparison;

3. Exhibits "P-15c", "P-15r", "P-15w" and "P-19a", for petitioner's failure to identify and to present the originals thereof for comparison;

4. Exhibits "P-15b", "P-15d", "P-15g", "P-15i", "P-15l", "P-15q" and "P-15u", for petitioner's failure to identify the exhibits during the trial and failure of the documents marked to correspond to the description in the Formal Offer of Evidence;

5. Exhibits "P-11", "P-12", "P-13", "P-14" and "P-17l", as they are not in the records of the case, petitioner's failure to identify the exhibits during trial and to present their originals thereof for comparison;

6. Exhibits "P-15f", "P-15h" and "P-15t", for petitioner's failure to identify the exhibits during trial, failure to present the originals thereof for comparison and the documents marked do not correspond to the description in the Formal Offer of Evidence; and

7. Exhibits "P-16d" (described as Revenue Collection Report and Deposits Line 1 Operations for the Month of July 2008), "P-16e" (described as Revenue Collection Report and Deposits Line 1 Operations for the Month of August 2008), "P-16f", "P-16g", "P-16h", "P-16i", "P-17c", "P-17d", "P-17e", "P-17f", "P-17g", "P-17h", "P-17i", "P-17j", "P-1915", "P-1919", "P-1923", "P-1925", "P-1926", "P-1933" and "P-1935", as the documents marked do not correspond to the description in the Formal Offer of Evidence.

When it was respondent's turn to present evidence, he presented the testimony of Revenue Officer Narissa B. Ty, the one who conducted the tax audit of petitioner for taxable year 2008, by way of a Judicial Affidavit dated August 10, 2016.[24] As to documentary exhibits, the Court admitted Exhibits "R-1" to "R-7-a" as respondent's evidence.[25]

[24] *Id.*, pp. 1226-1232, Exhibit "R-7; also at p. 1235, Minutes of the hearing held on August 16, 2016.
[25] *Id.*, pp. 1265-1266, Resolution dated November 25, 2016.

Thereafter, the Memorandum (For the Petitioner LRTA) was filed by registered mail on January 4, 2017 and received by the Court on January 11, 2017;[26] while respondent failed to file a Memorandum.[27] As a result, the Court declared the case submitted for decision on January 25, 2017.[28]

THE ISSUES

The parties submitted the following issues for the Court's disposition:[29]

1. Whether LRTA is liable to pay the deficiency VAT and percentage tax being collected by the Bureau of Internal Revenue; and

2. Whether the subject assessment, issued by respondent against the petitioner covering deficiency value-added tax and percentage tax for taxable year 2008, are legal and with factual bases.

THE RULING OF THE COURT

At the outset, it must be emphasized that the Courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[30] Hence, the Court deems it necessary to determine first whether or not the Court of Tax Appeals has jurisdiction over the present case.

Respondent alleges in his Answer that petitioner failed to timely file its protest; thus, the assessment already became final, executory, and unappealable.

The National Internal Revenue Code of 1997 provides for the procedure in protesting the assessment, to wit:

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[26] *Id.*, pp. 1268-1275.
[27] *Id.*, p. 1277, Records Verification dated January 11, 2017.
[28] *Id.*, p. 1279, Resolution dated January 25, 2017.
[29] *Id.* at Note 1, p. 467, Issues, Pre-Trial Order dated August 12, 2014.
[30] *Ace Publications, Inc. vs. The Commissioner of Customs and Collector of Customs*, G.R. No. L-18808, May 29, 1964.

"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:

xxx xxx xxx

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. 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis supplied*)

On the other hand, the pertinent portions of Section 3.1.5 of Revenue Regulations No. 12-99, implementing Section 228 of the NIRC of 1997, as amended, reads:

"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. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

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.

xxx xxx xxx

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." (*Emphasis supplied*)

It is clear from the foregoing that the taxpayer may protest the assessment within a period of thirty (30) days from receipt thereof and that failure to contest the assessment within the 30-day period renders the assessment notice final, executory, and demandable.

In this case, petitioner received the FAN on January 19, 2012.[31] Counting 30 days from the said date, the last day for petitioner to file its protest was on February 20, 2012[32]. However, petitioner filed its protest against the aforementioned FAN only on March 6, 2012.[33] Thus, the assessment already became

[31] BIR Records, pp. 269-273, Exhibit "R-5".
[32] February 18, 2012 was a Saturday.
[33] *Id.* at Note 31, pp. 288-290, Exhibit "R-6".

final, executory, and unappealable upon the expiration of the 30-day period to protest on February 20, 2012.

It must be reiterated that any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes.[34]

As provided in Section 228 of the NIRC of 1997, as amended, the failure of a taxpayer to file a timely protest against the FAN rendered the assessment therein final, executory and unappealable. Once the case had attained finality, petitioner is already precluded from disputing the correctness of the assessment.

Clearly, despite the subsequent filing of the protest on March 6, 2012, petitioner is already precluded from contesting the assessment considering that the same already became final, executory and unappealable. Therefore, the Court is already barred from determining the validity and correctness of the said assessment.

Significantly, in *Republic of the Philippines vs. Hizon*[35], the Supreme Court ruled:

> "The contention has no merit. Sec. 229 of the Code mandates that **a request for reconsideration must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable and, therefore, demandable.** The notice of assessment for respondent's tax deficiency was issued by petitioner on July 18, 1986. On the other hand, respondent made her request for reconsideration thereof only on November 3, 1992, without stating when she received the notice of tax assessment. She explained that she was constrained to ask for a reconsideration in order to avoid the harassment of BIR collectors. In all likelihood, she must have been referring to the distraint and levy of her properties by petitioner's agents which took place on January 12, 1989. Even assuming that she first learned of the deficiency assessment on this date**, her request for reconsideration was nonetheless filed late since she made it more than 30 days thereafter.** Hence, her request for reconsideration did not suspend the running of the prescriptive period provided under §223(c). Although the Commissioner acted on her request by eventually denying it on August 11, 1994, this is of no moment and does not

[34] *Commissioner of Internal Revenue, vs. Gonzales, et al.*, G.R. No. 177279, October 13, 2010, citing *Marcos II vs. Court of Appeals,* G.R. No. 120880, June 5, 1997.
[35] G.R. No. 130430, December 13, 1999.

> detract from the fact that **the assessment had long become demandable.**" (*Emphasis supplied*)

In this case, the validity and correctness of the assessment had become binding and conclusive upon petitioner, as held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[36], to wit:

> "The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments."

Considering, therefore, that petitioner's protest letter was filed beyond the 30-day reglementary period, the deficiency assessment **had already become final, executory, and demandable**.

At this juncture, let it also be stressed that the Court of Tax Appeals exercises appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, among others. In this regard, Section 7(a)(1) of Republic Act No. 9282 provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue Code 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 or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue Code in cases involving disputed**

[36] G.R. No. 134062, April 17, 2007.

> **assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue 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*)

In order to successfully invoke the jurisdiction of this Court, a "decision of the Commissioner of Internal Revenue on a disputed assessment" is necessary except when the ground relied upon is the inaction of the Commissioner of Internal Revenue.

As already explained, petitioner failed to file its protest within the 30-day period provided by law. Thus, the assessment is deemed to have not been protested. Accordingly, there is no "denial of a valid protest" in this case and the issued FDDA cannot be considered as a decision on "disputed assessment" which would have been appealable before this Court.

It must be reiterated that the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.[37]

Since the Court cannot consider the FDDA in this case as the "decision on the disputed assessment" because petitioner failed to timely protest the assessment, which consequently became final and executory, the Court has no jurisdiction to take cognizance of the instant case.

With the foregoing findings, the Court deems it unnecessary to resolve the stipulated issues.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[37] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of 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