Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

LOADSTAR INTERNATIONAL SHIPPING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9176
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

JUL 3 0 2018 ; 3:00 pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review (with Motion for Suspension of Collection of Tax)[1] filed on October 22, 2015 by Loadstar International Shipping, Inc., pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, vol. I, pp. 6-22.
[2] 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 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; xxx.
[3] Act Creating the Court of Tax Appeals.
[4] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over 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.
[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally

Petitioner seeks to set aside the Final Decision on Disputed Assessment (FDDA) dated March 24, 2015 that found it liable for alleged deficiency income tax and value-added tax (VAT) for taxable year 2010 in the amounts of ₱2,080,530.74 and ₱1,520,666.84, or a total amount of ₱3,601,197.58, as contained in Assessment Notice/Demand Nos. 34-10-IT-5992 and 34-10-VT-5993, respectively.

Petitioner Loadstar International Shipping, Inc. is an entity duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Loadstar Bldg., No. 1294 Romualdez Street, Paco, Manila.[6] It is registered as a VAT zero-rated taxpayer as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN1RC0000161890.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue 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.

Petitioner was established in October 1978 as an overseas Philippine Shipping Company principally engaged in overseas operation, as indicated in its Articles of Incorporation[7] and Amended Articles of Incorporation[8] filed with the Securities and Exchange Commission (SEC). It is a Maritime Industry Authority (MARINA) Accredited Enterprise from October 15, 2008 until October 15, 2017 as shown by its MARINA Certificates of Accreditation[9].

On June 27, 2011, respondent issued Letter of Authority No. SN: eLA201000045011/LOA-034-2011-00000067[10] and Letter Notice No.

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collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Par. 1, Facts, Pre-Trial Order, Docket, vol. I, p. 365.
[7] Exhibit "P-2", Docket, vol. I, pp. 397-405.
[8] Exhibit "P-2-A", Docket, vol. I, pp. 406-415.
[9] Exhibits "P-4", "P-5", "P-6", and "P-7", Docket, vol. I, pp. 418-421.
[10] Exhibit "R-1", Docket, vol. II, p. 510.

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034-RLF-10-00-00053[11] with attachments against petitioner regarding its tax liabilities for taxable year 2010.

Respondent issued a Preliminary Assessment Notice (PAN)[12] against petitioner on December 23, 2013, assessing it for alleged deficiency income tax and deficiency value-added tax in the amounts of ₱1,961,269.86 and ₱1,434,833.65, respectively.[13]

Thereafter, petitioner filed a letter dated January 6, 2014, requesting the reinvestigation of all of its internal revenue tax liabilities for taxable year 2010.[14]

On April 11, 2014, respondent sent a letter to petitioner requiring the submission of documentary evidence in support of its request for reinvestigation.[15]

On August 12, 1014, the Formal Letter of Demand[16] and Assessment Notice Nos. 34-10-IT-5992[17] and 34-10-VT-5993[18], all dated August 5, 2014, were sent by BIR Revenue Region No. 6 to petitioner.[19]

A Letter dated September 2, 2014 was sent by petitioner to BIR Revenue Region No. 6 protesting the Formal Letter of Demand and the Assessment Notices.[20]

Subsequently, a letter dated September 17, 2014[21] was sent to petitioner informing it that its case was under re-investigation and was referred to Revenue District Office (RDO) No. 34.[22]

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[11] Exhibit "R-8", Docket, vol. II, p. 517.
[12] Exhibit "R-16", BIR Records, pp. 207-208.
[13] Par. 1.3, Admissions and Stipulations, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 351.
[14] Exhibit "R-17", Docket, vol. II, p. 530.
[15] Par. 1.4, Admissions and Stipulations, JSFI, Docket, vol. I, p. 351.
[16] Exhibit "P-14", Docket, vol. I, pp. 449-450; Exhibit "R-21", Docket, vol. II, pp. 534-535.
[17] Exhibit "R-22", BIR Records, p. 228.
[18] Exhibit "R-23", BIR Records, p. 229.
[19] Par. 1.5, Admissions and Stipulations, JSFI, Docket, vol. I, p. 351.
[20] Par. 1.6, Admissions and Stipulations, JSFI, Docket, vol. I, p. 351.
[21] Exhibit "R-24", BIR Records, p. 238.
[22] Par. 1.7, Admissions and Stipulations, JSFI, Docket, vol. I, p. 352.

Another letter dated January 20, 2015 was sent to petitioner, informing petitioner that it failed to submit the required documents within reasonable time and that the case has been forwarded to the Assessment Division.[23]

BIR Revenue Region No. 6 issued a Final Decision on Disputed Assessment[24] on March 24, 2015, maintaining that the assessment made on petitioner has become final by operation of law and thereby denying the reinvestigation requested by petitioner.[25]

On August 12, 2015, petitioner received a Preliminary Collection Letter[26] dated August 10, 2015 requesting it to pay its alleged tax liabilities within ten (10) days from receipt and to pay the same to the Collection Division.

Petitioner's counsel sent a protest letter[27] to respondent on September 1, 2015, contending that petitioner is exempt from paying income tax and value-added tax based on Section 7 of Republic Act No. 7471, as amended by RA No. 9301, as well as Section 108(b)(4) and (6) and Section 109 of the NIRC of 1997, as amended.

On September 22, 2015, petitioner's counsel received from respondent a letter dated September 14, 2015[28] denying its protest and stating that the assessment against petitioner has been rendered final, executory and demandable. Respondent also requested petitioner's counsel to advise petitioner to settle its tax liabilities within ten (10) days, otherwise respondent will be constrained to continue enforcement through administrative and legal remedies.

Hence, on October 22, 2015, the instant Petition for Review[29] was filed.

Respondent filed his Answer[30] on November 11, 2015, interposing the following special and affirmative defenses:

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[23] Par. 1.8, Admissions and Stipulations, JSFI, Docket, vol. I, p. 352.
[24] Exhibit "R-30", Docket, vol. II, p. 544.
[25] Par. 1.9, Admissions and Stipulations, JSFI, Docket, vol. I, p. 352.
[26] BIR Records, p. 261.
[27] BIR Records, pp. 266-269.
[28] BIR Records, p. 270.
[29] Docket, vol. I, pp. 6-21.
[30] Docket, vol. I, pp. 84-88.

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"**SPECIAL AND AFFIRMATIVE DEFENSES**

16. The Honorable Court has no jurisdiction to entertain the instant petition for review. Assessment Notice Nos. 34-10-IT-5992 and 34-10-VT-5993 for deficiency income tax and value-added tax in the total amount of ₱3,601,197.58 has attained finality after the lapse of thirty (30) days from receipt of the Final Decision on Disputed Assessment (FDDA), without the same having been elevated to the Court of Tax Appeals via petition for review. The FDDA was issued on March 24, 2015.

17. Section 228 of the Tax Code of 1997 provides, thus:

> *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*
>
> *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.*
>
> *xxx xxx xxx*
>
> *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)

18. Petitioner received the Final Decision on Disputed Assessment (FDDA) dated March 24, 2015 on April 6, 2015 per its undated letter received by the BIR on May 15, 2015. Hence, petitioner has until May 06, 2015 within which to appeal the FDDA to the Court of Tax Appeals via petition for review.

19. The instant petition for review was filed only on October 22, 2015, hence, filed out of time.

20. The subject tax assessments have become, final, executory, and demandable. Consequently, the same have become incontestable with the Prosecutor's Office and ordinary courts (*Sections 205 and 228 of the NIRC of 1997; Sections 7 and 11 of Republic Act No. 9282; Republic vs. Lim Tian Teng & Co., 165 SCRA 584; Republic vs. Ledesma, 19 SCRA 455; Republic vs. Magalona, Jr., et. Al., 109 Phil 723; Commissioner vs. Concepcion, 22 SCRA 1058*).

21. It is a well-established doctrine in taxation that an assessment, whether valid or void, shall become final, and executory, when no administrative protest is filed within thirty (30) days from receipt of the assessments (*Allied Bank Corporation vs. Commissioner of Internal Revenue, CTA EB No. 167, August 23, 2006*). In fact, even an assessment which is contrary to law can attain finality if the same is not protested (*Singer Finance Corporation vs. Commissioner of Internal revenue, CTA. EB No. 10, March 04, 2005, CTA Case No. 6743 citing Republic vs. Manila Port A Service, GR No. 18208. November 27, 1964*).

22. There is no BIR tax exemption ruling issued to petitioner as of the filing of the instant petition for review.

23. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity (*Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647*), Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 677*); and

assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 547*).

24. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals. et. Al.; 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]*).

25. As provided in Section 218 of the Tax Code of 1997, as amended, no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by the Code.

26. Taxes are the life blood of the government and should be collected without unnecessary hindrance (Marcos II vs. Court of Appeals, 273 SCRA 47). Public policy dictates that collection of taxes should be accorded paramount importance for the sustenance of government. Thus, for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay."

The case was set for pre-trial conference on March 31, 2016.[31]

Meanwhile, a hearing of petitioner's Motion for Suspension of Collection of Tax embodied in its Petition for Review was held on November 26, 2015.[32]

Petitioner filed its Formal Offer of Documentary Evidence[33] on December 7, 2015.

In the Resolution[34] dated March 17, 2016, the Court resolved petitioner's Formal Offer of Documentary Evidence and Motion for Suspension of Collection of Tax. The Court admitted the Judicial Affidavit of Teodoro G. Bernardino marked as petitioner's Exhibit "P-

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[31] Order dated November 23, 2015, Docket, vol. I, p. 90.
[32] Minutes of the Hearing and Resolution dated November 26, 2015, Docket, vol. I, pp. 142-143, and 145-146.
[33] Docket, vol. I, pp. 147-151.
[34] Docket, vol. I, pp. 211-215.

12" and denied the rest of its evidence for failure to submit the duly marked exhibits. The Court likewise found that there is nothing to suspend or restrain, considering that respondent has not yet resorted to any of its administrative or judicial remedies for collection under existing laws, and petitioner failed to show that demand for payment has been made. Thus, petitioner's Motion for Suspension of Collection of Tax was denied for lack of merit.

Thereafter, respondent's Pre-Trial Brief[35] was filed on March 29, 2016; while petitioner's Pre-Trial Brief[36] was filed on June 1, 2016.

The parties filed their Joint Stipulation of Facts and Issues[37] on July 7, 2016. It was approved by the Court in the Resolution[38] dated July 19, 2016, which also terminated the Pre-Trial. Afterwards, the Pre-Trial Order[39] was issued on August 2, 2016.

During trial, petitioner presented Mr. Teodoro G. Bernardino[40], the president of Loadstar International Shipping, Inc., as its witness.

Petitioner then filed its Formal Offer of Evidence[41] on September 2, 2016. In the Resolution[42] dated November 16, 2016, the Court admitted Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-4", "P-5", "P-6", "P-7", "P-14", "P-13", and "P-13-a".

The documentary exhibits formally offered by petitioner and admitted by the Court are as follows:

Exhibit:	Description:
P-1	Secretary's Certificate dated July 24, 2014
P-2	SEC Certificate of Incorporation No. 82233 issued on October 4, 1978
P-2-a	Certificate of Filing Amended Articles of Incorporation

[35] Docket, vol. I, pp. 222-226.
[36] Docket, vol. I, pp. 229-237.
[37] Docket, vol. I, pp. 351-356.
[38] Docket, vol. I, p. 360.
[39] Docket, vol. I, pp. 364-373.
[40] Minutes of the Hearing dated August 24, 2016, Docket, vol. I, pp. 376-378; Exhibit "P-13", Judicial Affidavit of Teodoro G. Bernardino, Docket, vol. I, pp. 241-246.
[41] Docket, vol. I, pp. 387-392.
[42] Docket, vol. I, pp. 466-467.

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P-3	BIR Certificate of Registration with OCN-1RC0000161890
P-4	MARINA Certificate of Accreditation No. 05-09-09-181-493 for years 2008 to 2011
P-5	MARINA Certificate of Accreditation No. 181-08-08-19-045-A for years 2008 to 2011
P-6	MARINA Certificate of Accreditation No. 181-11-08-23-0015 for years 2011 to 2014
P-7	MARINA Certificate of Accreditation No. 181-14-10-07-0020 for years 2014 to 2017
P-13	Judicial Affidavit of Teodoro G. Bernardino
P-13-a	Signature of Teodoro G. Bernardino
P-14	Formal Letter of Demand dated August 5, 2014

On the other hand, respondent presented Revenue Officers Gloria S. Maliwanag[43], Jaypee A. Legaspi[44], Jenisse P. Alano[45], and Maria Gracielle Cecilia F. San Pedro-Anaban[46].

On March 1, 2017, respondent filed a Motion to Admit Attached Respondent's Formal Offer of Evidence[47]. This was granted by the Court in the Resolution dated March 20, 2017, and respondent's Formal Offer of Evidence[48] was admitted.

In the Resolution[49] dated July 21, 2017, the Court admitted respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-8-1", "R-8-2", "R-9", "R-11", "R-12", "R-12-1", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-25", "R-26", "R-27", "R-28", "R-29", "R-30", "R-31", "R-32", "R-33", "R-34", "R-34-1", "R-35", "R-35-1", "R-36", "R-36-1", "R-37", and "R-37-1". However, Exhibit "R-10" was denied admission for failure to have the document identified.

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[43] Minutes of the Hearing dated November 22, 2016, Docket, vol. I, pp. 468-470; Exhibit "R-34", Judicial Affidavit of Revenue Officer Gloria S. Maliwanag, Docket, vol. I, pp. 281-286.
[44] Minutes of the Hearing dated January 17, 2017, Docket, vol. I, pp. 474-476; Exhibit "R-35", Judicial Affidavit of Revenue Officer Jaypee A. Legaspi, Docket, vol. I, pp. 321-324.
[45] Minutes of the Hearing dated January 17, 2017, Docket, vol. I, pp. 474-476; Exhibit "R-36", Judicial Affidavit of Revenue Officer Jenisse P. Alano, Docket, vol. I, pp. 331-336.
[46] Minutes of the Hearing dated February 7, 2017, Docket, vol. II, pp. 493-496; Exhibit "R-37", Judicial Affidavit of Revenue Officer Maria Gracielle Cecilia F. San Pedro, Docket, vol. I, pp. 482-486.
[47] Docket, vol. II, pp. 500-501.
[48] Docket, vol. II, pp. 502-509.
[49] Docket, vol. II, pp. 562-564.

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Respondent's documentary exhibits are the following:

Exhibit:	Description:
R-1	Letter of Authority No. SN: eLA201000045011/LOA-03402011-00000067 dated June 27, 2011
R-2	List of Audit Requirements per Tax Type dated June 29, 2011
R-3	First Request for Presentation of Records
R-4	Second Request for Presentation of Records dated July 5, 2011
R-5	Final Notice dated July 12, 2011
R-6	Notice for Informal Conference
R-7	Memorandum of Assignment dated April 25, 2012
R-8	Letter Notice No. (LN-034-RLF-10-00-00053) dated May 03, 2012
R-8-1	Attached Details of Taxpayer's Supplier's Records
R-8-2	Page two (2) of Details of Taxpayer's Supplier's Records
R-9	Follow-up letter dated May 30, 2012
R-11	Post Reporting Notice dated March 18, 2013
R-12	Attached computation of deficiency taxes
R-12-1	Details of Discrepancies
R-13	Revenue Officer's Audit Report on Income Tax (BIR Form 0500)
R-14	Revenue Officer's Audit Report on Value-Added Tax (BIR Form 0507)
R-15	Assignment Slip
R-16	Pre-Assessment Notice dated December 23, 2013 with Details of Discrepancy
R-17	BIR letter dated February 19, 2014
R-18	BIR letter dated April 11, 2014
R-19	Memorandum dated June 4, 2014
R-20	2nd Indorsement dated June 9, 2014
R-21	Formal Letter of Demand dated August 05, 2014 with Details of Discrepancy
R-22	Assessment Notice No. 34-10-IT-5992 dated August 05, 2014
R-23	Assessment Notice No. 34-10-VT-5993 dated August 05, 2014
R-24	BIR letter to petitioner dated September 17, 2014
R-25	Indorsement letter dated September 25, 2014

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R-26	Memorandum of Assignment dated September 29, 2014
R-27	BIR letter to petitioner dated October 08, 2014
R-28	Memorandum dated December 4, 2014
R-29	2nd Indorsement dated January 21, 2015
R-30	Final Decision on Disputed Assessment dated March 24, 2015
R-31	BIR letter to petitioner dated April 22, 2015
R-32	BIR letter to petitioner dated June 3, 2015
R-33	Indorsement letter dated June 30, 2015
R-34	Judicial Affidavit of Revenue Officer Gloria S. Maliwanag consisting of six (6) pages
R-34-1	Signature atop the printed name "Gloria S. Maliwanag" on page five (5) of the Judicial Affidavit
R-35	Judicial Affidavit of Revenue Officer Jaypee A. Legaspi consisting of four (4) pages
R-35-1	Signature atop the printed name "Jaypee A. Legaspi" on page three (3) of the Judicial Affidavit
R-36	Judicial Affidavit of Revenue Officer Jenisse P. Alano consisting of six (6) pages
R-36-1	Signature atop the printed name "Jenisse P. Alano" on page five (5) of the Judicial Affidavit
R-37	Judicial Affidavit of Revenue Officer Maria Gracielle Cecilia F. San Pedro-Anaban consisting of five (5) pages
R-37-1	Signature atop the printed name "Maria Gracielle Cecilia F. San Pedro-Anaban" on page five (5) of the Judicial Affidavit

Respondent and petitioner both filed their respective Memorandum through registered mail on August 24, 2017 and received by the Court on September 4, 2017.[50] Thus, in the Resolution dated September 11, 2017, the Court declared the present case submitted for decision.

The parties stipulated on the following issue[51] for resolution of this Court:

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[50] Docket, vol. II, pp. 565-570 and 572-587, respectively.
[51] Statement of the Issues, JSFI, Docket, vol. I, p. 352.

Whether petitioner is liable for deficiency income tax and value-added tax for taxable year 2010 in the amounts of ₱2,080,530.74 and ₱1,520,666.84, respectively.

Petitioner argues that it is not liable for deficiency income tax since it is exempt from income tax being a company engaged in overseas shipping pursuant to RA No. 7471, as amended by RA No. 9301. It claims that it is not liable for deficiency VAT since its sales are VAT zero-rated being engaged in overseas shipping and as confirmed by the Commissioner's own witness.

Moreover, petitioner contends that since it did not execute any waiver of prescriptive period, the Commissioner's authority to assess deficiency income tax and VAT has already prescribed. Finally, petitioner argues that it was denied due process inasmuch as the assessments, the Final Decision on Disputed Assessment, the Collection Letters, and the subsequent letters were not received by a duly authorized officer of petitioner.

Respondent insists that petitioner is liable for deficiency income tax and value-added tax for taxable year 2010 in the amounts of ₱2,080,530.74 and ₱1,520,666.84, respectively.

According to respondent, Assessment Notice Nos. 34-10-IT-5992 and 34-10-VT-5993 for deficiency income tax and value-added tax, respectively, in the total amount of ₱3,601,197.58, have attained finality after the lapse of thirty (30) days from receipt of the Final Decision on Disputed Assessment, without the same being elevated timely to the Court of Tax Appeals via Petition for Review.

Moreover, respondent contends that petitioner failed to submit documentary evidence to prove that it was issued BIR tax exemption ruling for being engaged in international shipping pursuant to Republic Act No. 7471, as amended by RA No. 9301. He alleges that the exemption granted under RA No. 9301 is not absolute as there are conditions to be complied with before claiming tax exemption.

The Court shall determine first whether it has jurisdiction to entertain the present Petition for Review.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[52] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) of Republic Act No. 1125, as amended by RA Nos. 9282 and 9503, which 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 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;" (*Emphasis supplied*)

It is clearly stated in the afore-quoted provision that the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions of the Commissioner of Internal Revenue in cases involving disputed assessments of internal revenue taxes.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

"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

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[52] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

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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)*

Based on the foregoing provision, the taxpayer has thirty (30) days from receipt of the Final Decision on Disputed Assessment within which to appeal the decision with the Court of Tax Appeals.

It must be emphasized that the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[53]

In this case, petitioner received the FDDA dated March 24, 2015 on April 6, 2015 per its undated letter received by the BIR on May 15,

[53] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007.

2015.[54] This was also testified to by respondent's witness, Revenue Officer Jenisse P. Alano, in her Judicial Affidavit[55], the pertinent portions of which are quoted hereunder:

"Q20. What happened next, if any?

A. On May 15, 2015, we received a letter from C.M. Ilagan & Associates, CPA's stating that the **BIR March 24, 2015 letter (FDDA) was received by petitioner on April 6, 2015** and reiterated its request for reinvestigation.

Q21. What was your response to petitioner's request for reinvestigation, if any?

A. In a letter dated June 03, 2015, we informed petitioner that we can no longer act on its undated protest letter received on May 18, 2015 on the ground that a Final Decision on Disputed Assessment (FDDA) has already been rendered and issued on March 24, 2015."

During the hearing on January 17, 2017, respondent's witness, Revenue Officer Alano, was questioned on the matter:

"PRESIDING JUSTICE DEL ROSARIO:

Ms. Alano, you stated in your answer to Question No. 20, kindly go over your Judicial Affidavit, that the petitioner actually received a copy of the FDDA on April 6, 2015. It appears that you based your answer on a letter sent by CN Ilagan and Associates. Do you have a copy of this letter?

MS. ALANO:

A. Your Honors, can I check?

PRESIDING JUSTICE DEL ROSARIO:

Yes.

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[54] BIR Records, pp. 248-249.
[55] Exhibit "R-36", Judicial Affidavit of Revenue Officer Jenisse P. Alano, Docket, vol. I, p. 334.

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It appears that this Letter is not attached to your Judicial Affidavit.

So, Ms. Alano, did you actually see a copy of that letter?

MS. ALANO:

A. Yes, your Honors.

PRESIDING JUSTICE DEL ROSARIO:

And, what would be the reason as to why the same has not been attached to your Judicial Affidavit?

Okay, for the record, 'NO ANSWER.' So, as not to waste the time of the Court.

But do you have a copy of that letter right now?

MS. ALANO:

A. Yes, your Honors

PRESIDING JUSTICE DEL ROSARIO:

Can you show it to the Court?

MS. ALANO:

A. Yes, your Honors.

PRESIDING JUSTICE DEL ROSARIO:

So, kindly go over this letter and please point to the particular portion showing the actual statement saying that the receipt by the petitioner of the FDDA was on April 6, 2015. Is it there?

Just for the record, are you referring to Lines No. 1 and 2, the first and second lines?

MS. ALANO:

A. Yes, your Honors.

PRESIDING JUSTICE DEL ROSARIO:

So, it is apparently indicated that the receipt of the FDDA was on April 6, 2015.

MS. ALANO:

A. Yes, your Honors, 2015."[56]

Based on the foregoing, petitioner received the FDDA on April 6, 2015. Hence, petitioner had until May 6, 2015 within which to appeal the FDDA to the Court of Tax Appeals via Petition for Review.

The records show that the instant Petition for Review[57] was filed only on October 22, 2015. Thus, the Petition for Review was filed out of time. Consequently, the Court has no jurisdiction over the instant case.

To reiterate, the 30-day period within which to file an appeal of the denial of the claim or inaction on the part of the BIR Commissioner is both mandatory and jurisdictional, and non-compliance therewith precludes the CTA from acquiring jurisdiction over the case.

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

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[56] Transcript of Stenographic Notes of the hearing held on January 17, 2017, pp. 30-31.
[57] Docket, vol. I, pp. 6-21.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division