REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

MISAMIS ORIENTIAL RURAL ELECTRIC SERVICE COOPERATIVE I, INC. (MORESCO-I),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9585

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

OCT 01 2019 10:00 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before this Court is a Petition for Review[1] filed by Misamis Oriental Rural Electric Service Cooperative I, Inc. (MORESCO-I), praying that judgment be rendered cancelling the deficiency tax assessments issued by the Commissioner of Internal Revenue (CIR) in the amount of ₱82,161,164.98 representing its alleged deficiency Income Tax (IT), Value-added Tax (VAT), Expanded Withholding Tax (EWT), and Compensation Withholding Tax (CWT) for taxable year (TY) 2013.

STATEMENT OF FACTS

Petitioner Misamis Oriental Rural Electric Service Cooperative I, Inc. (MORESCO-I) is an electric cooperative existing pursuant to the laws of the

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[1] Docket, pp. 10-19.

Republic of the Philippines, with principal office address at Poblacion, Laguindingan, Misamis Oriental.[2]

On the other hand, respondent is the incumbent Commissioner of the Bureau of Internal Revenue (BIR) and is vested by law with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 29, 2014, petitioner received Letter of Authority (LOA) No. 098-2014-00000304[3] dated September 24, 2014 issued by then OIC-Regional Director Alberto S. Olasiman of Revenue Region No. 16 – Cagayan De Oro City (CDO), Misamis Oriental, authorizing Revenue Officers Harly A. Macasling and Dioscora Ompoc to examine petitioner's books of accounts for TY 2013.

On June 20, 2016, petitioner received a Preliminary Assessment Notice[4] (PAN) dated May 11, 2016 assessing petitioner for deficiency IT, VAT, EWT, and CWT in the amount of Eighty-One Million Three Hundred Eighty Thousand One Hundred Fifty-Five Pesos and 25/100 (₱81,380,145.25).

In response, petitioner sent on July 8, 2016 a Letter of Protest with Request for Reinvestigation[5] dated July 7, 2016 to Regional Director Glen A. Geraldino of Revenue Region No. 16. Petitioner, among others, claims that the PAN has no factual and legal bases since petitioner, being an electric cooperative, is permanently exempted from income tax liability under Section 39 of Presidential Decree (PD) No. 269[6].

On June 24, 2016, respondent issued a Formal Letter of Demand[7] (FLD) with attached Details of Discrepancies reiterating petitioner's revenue tax liabilities in the amount of Eighty-Two Million One Hundred Sixty-One Thousand One Hundred Sixty-Four Pesos and 98/100 (₱82,161,164.98), representing deficiency IT, VAT, EWT, and CWT for TY 2013, broken down as follows:

[2] Par. 1, Joint Stipulation of Facts and Issue (JSFI), Docket, p. 146.
[3] Exhibit "P-2".
[4] Exhibit "P-3".
[5] Exhibit "P-4".
[6] Creating the "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the said Objective, Prescribing Terms and Conditions for Their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes, August 6, 1973.
[7] Exhibit "P-5".

TAX TYPE	AMOUNT
Income Tax	₱ 75,092,151.01
Value-added Tax	1,977,185.49
Expanded Withholding Tax	2,465,029.27
Compensation Withholding Tax	2,626,799.21
TOTAL AMOUNT PAYABLE	**₱82,161,164.98**

On November 2, 2016, petitioner filed a Protest Letter[8] dated October 25, 2016 with BIR Revenue Region No. 16 – Cagayan De Oro City, Misamis Oriental, reiterating its previous position that it is permanently exempted from income tax liability under Section 39 of PD No. 269.

On April 4, 2017, petitioner received a Letter[9] dated March 30, 2017 from Revenue District Officer Venerando B. Homez of BIR Revenue District No. 98 denying petitioner's Protest Letter.

Undaunted, petitioner elevated the matter to this Court via the instant Petition for Review on May 4, 2017.

In his Answer[10] filed on July 10, 2017, respondent interposed the following affirmative defense:

> **"I. THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION**
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> 8. Jurisdiction over the subject matter or nature of action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court, which, otherwise, would have no jurisdiction over the subject matter or nature of an action.
>
> 8.1 The timeliness of filing of protest against disputed assessments with the BIR, and thereafter, with the Court of Tax Appeals (CTA) is governed by Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:
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> 'SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds

[8] Exhibit "P-6".
[9] Exhibit "P-7".
[10] Docket, pp. 72-87.

that proper taxes should be assessed, he shall first only notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

x x x

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.'

8.2 In relation thereto, Revenue Regulation *[sic]* (RR) No. 12-99, provides:

'**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.

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

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 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.'

8.3 Based on the foregoing, petitioner has thirty days from receipt of the Formal Letter of Demand to protest the assessment. However, in the instant petition, petitioner failed to allege that it timely filed a protest to the Formal Letter of Demand.

8.4 For its failure to allege the timely filing of protest to the Formal Letter of Demand, the instant petition should be dismissed.

8.5 A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail it can no longer be contested. An assessment that has become final, executory and demandable is not within the jurisdiction of this Court, said jurisdiction being limited to decisions or inaction by the Commissioner of Internal Revenue in cases involving **<u>disputed assessments</u>**.

8.6 The Final Decision of Disputed Assessment is of no legal value. As a rule, the State, as represented by the government, is not estopped by the mistakes or errors of its officials or agents. This is especially true when the government's actions are sovereign in nature.

8.7 Nowhere is the aforestated rule more that in the field of taxation. It is axiomatic that the Government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and within which the State effects its functions for the welfare of its constituents. The errors of certain

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> administrative officers should never be allowed to jeopardize the Government's financial position." *(Citations Omitted)*

Afterwards, this Court issued a Notice of Pre-Trial Conference[11] on July 12, 2017, notifying the parties that a pre-trial conference is set on September 26, 2017 and ordering them to file their respective pre-trial briefs at least three (3) days before the said date.

On July 20, 2017, respondent filed a Motion to Defer Transmittal of BIR Records[12] praying that transmittal of the BIR Records be deferred until submission of the respective judicial affidavits of his witnesses. Finding merit thereon, this Court, in a Resolution[13] dated August 3, 2017, granted respondent's Motion.

Respondent filed his Pre-Trial Brief[14] on September 18, 2017, while petitioner filed its Pre-Trial Brief[15] on September 22, 2017.

On September 26, 2017, the Court issued an Order[16] directing the parties to submit within five (5) days their Joint Stipulation of Facts and Issues and the counsel for petitioner to submit his Special Power of Attorney (SPA) for purposes of pre-trial conference within three (3) days, or until September 29, 2017.

However, respondent failed to certify and elevate the BIR Records of the case, and the counsel for petitioner failed to submit his SPA as per Records Verification Reports[17] dated October 3 and 5, 2017, respectively. The parties also failed to submit their joint stipulations.

In a Resolution[18] dated October 19, 2017, this Court reminded respondent to file his witnesses' Judicial Affidavits within ten (10) days from notice thereto and within five (5) days therefrom, certify and elevate the BIR Records; ordered petitioner to explain within ten (10) days from receipt thereof why it should not be cited for contempt, and also, within the same period, submit the new Judicial Affidavit of its witness and its counsel's SPA; and, lastly, ordered the parties to submit within ten (10) days their joint stipulations.

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[11] *Ibid*, pp. 88-89.
[12] *Id.*, pp. 90-93.
[13] *Id.*, p. 95.
[14] *Id.*, pp. 96-99.
[15] *Id.*, pp. 100-103.
[16] *Id.*, pp. 112-113.
[17] *Id.*, pp. 114 and 115.
[18] *Id.*, pp. 117-119.

However, again, as per Records Verification Report[19] dated November 22, 2017, respondent failed to comply with the October 19, 2017 Resolution.

Therefore, on November 28, 2017, this Court issued a Resolution[20], this time, ordering respondent to explain within ten (10) days from receipt of notice why it should not be cited for contempt and, citing petitioner for indirect contempt. Petitioner was ordered to pay a fine of Ten Thousand Pesos (₱10,000.00).

On the same day, petitioner filed a Manifestation with Motion for Reconsideration[21] seeking indulgence from this Court to reconsider and set aside the fine imposed. Petitioner further manifested that respondent's deficiency assessments for VAT, EWT, and CWT have already been settled and the only dispute to be resolved is a purely legal one. Petitioner also attached an updated Judicial Affidavit of its witness and the SPA for purposes of pre-trial conference.

The parties filed their Joint Compliance with Motion to Admit Attached Joint Stipulation of Facts and Issues[22] on December 1, 2017.

On December 7, 2017, respondent filed a Compliance with Motion for Extension of Time to Submit Judicial Affidavits of Respondent's Witnesses and Transmit BIR Records[23]. Respondent prayed that it be granted a period of ten (10) days within which to submit the Judicial Affidavits of his witnesses and a period of five (5) days within which to transmit the BIR Records of the case.

On December 12, 2017, respondent submitted the respective Judicial Affidavits of Revenue Officers Ellen S. Tampus[24] and Harly Macasling[25].

Respondent filed his Compliance[26] on December 14, 2017, praying that the transmittal of the BIR Records consisting of five hundred fifty (550) pages be noted.

Thus, in the Resolution dated December 18, 2017, this Court granted the parties' Joint Compliance with Motion to Admit Attached Joint Stipulation of Facts and Issues thereby admitting as part of the records of the case the attached joint stipulations.

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[19] *Id.*, p. 126.
[20] *Id.*, pp. 121-125.
[21] *Id.*, pp. 132-134.
[22] *Id.*, 144-149.
[23] *Id.*, pp. 152-156.
[24] Exhibits "13" and "13-a".
[25] Exhibits "12" and "12-a".
[26] *Id.*, pp. 183-185.

Moreover, in the December 28, 2017 Resolution[27], this Court noted and granted respondent's Compliance with Motion for Extension of Time to Submit Judicial Affidavits of Respondent's Witnesses and Transmit BIR Records, and the subsequent Compliance he filed was likewise noted.

On January 12, 2018, a Pre-Trial Order[28] was issued by this Court. By virtue of which, the pre-trial conference was deemed terminated and the initial presentation of evidence for petitioner was scheduled on February 5, 2018.

Petitioner filed its Formal Offer of Evidence[29] via a licensed courier service on February 19, 2018, offering Exhibits "P-1" to "P-11-A" as its documentary evidence. On the other hand, respondent filed his Comment (on Petitioner's Formal Offer of Evidence)[30] on March 1, 2018. Thereafter, in a Resolution[31] dated March 27, 2018, this Court admitted petitioner's exhibits save for Exhibits "P-8", "P-9", and "P-10" for petitioner's failure to submit the duly marked exhibits. With the admission of petitioner's exhibits, this Court deemed petitioner to have rested its case. As such, the initial presentation of evidence for respondent was scheduled on May 7, 2018.

Meanwhile, on March 6, 2018, this Court issued a Resolution[32] regarding petitioner's Manifestation and Motion for Reconsideration filed on November 28, 2017. In the interest of justice, this Court found merit in its Motion and reduced petitioner's fine for indirect contempt from ₱10,000.00 to ₱2,000.00, and for arriving late despite due notice from ₱5,000.00 to ₱3,000.00.

Respondent filed his Formal Offer of Evidence[33] on May 16, 2016, offering Exhibits "R-1" to "R-11", inclusive of sub-markings. However, as per Records Verification Report[34] dated June 22, 2018, petitioner failed to file its Comment. Thereafter, in a Resolution[35] dated July 30, 2018, the Court admitted all of respondent's exhibits, and deemed respondent to have rested his case.

On May 18, 2018, a Records Verification Report[36] was issued by the CTA Judicial Records Division stating that petitioner failed to submit an

[27] *Ibid*, p. 190.
[28] *Id.*, pp. 193-197.
[29] *Id.*, pp. 212-214.
[30] *Id.*, pp. 217-219.
[31] *Id.*, pp. 225-226.
[32] *Id.*, pp. 221-223.
[33] *Id.*, pp. 230-235.
[34] *Id.*, p. 243.
[35] *Id.*, pp. 264-265.
[36] *Id.*, p. 236.

original Special Power of Attorney and that its counsel also failed to pay the imposed fines of ₱2,000.00 and ₱3,000.00.

The Court issued a Resolution[37] on June 19, 2018, stating that considering its exceeding leniency with petitioner, this Court reiterated its Order that, for the last time, petitioner must submit its original SPA within three (3) days from notice, and pay the fine in the reduced amounts of ₱2,000.00 and ₱3,000.00 within the same period. The Court stressed that failure to do so will result in the dismissal of the case with prejudice pursuant to Section 3 of Rule 17 of the Rules of Court.

On July 2, 2018, petitioner filed its Memorandum for the Petitioner[38].

On July 20, 2018, petitioner filed, via a licensed courier service, a Manifestation of Compliance[39] stating that it is submitting the following documents as proof if its compliance: Original Copy of the SPA executed by Engr. Colleen B. Tarcelo, Officer-in-Charge General Manager of petitioner; and Official Receipts No. 3799365 and 3799366 in the amounts of ₱3,000.00 and ₱2,000.00, respectively, representing payment of the imposed fine.

On July 30, 2018, the Court issued a Resolution[40] noting petitioner's Manifestation of Compliance and its Memorandum for the Petitioner. In view of the fact that petitioner already filed its Memorandum, this Court gave respondent a period of thirty (30) days within which to submit his Memorandum.

In compliance, respondent filed his Memorandum[41] on October 1, 2018.

Accordingly, in the Resolution[42] dated October 8, 2018, the instant case was declared deemed submitted for decision.

THE ISSUES

The following issues[43] were presented by the parties for this Court's resolution:

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[37] *Id.*, pp. 238-242.
[38] *Id.*, pp. 244-251.
[39] *Id.*, pp. 253-254.
[40] *Id.*, pp. 261-262.
[41] *Id.*, pp. 272-291.
[42] *Id.*, p. 293.
[43] *Id.*, pp. 146-147, JSFI, Statement of the Issues.

WHETHER OR NOT THE COURT HAS JURISDICTION OVER THE INSTANT PETITION.

WHETHER OR NOT PETITIONER IS LIABLE TO PAY DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX AND WITHHOLDING TAX ON COMPENSATION FOR TAXABLE YEAR 2013 IN THE AGGREGATE AMOUNT OF ₱82,161,164.98, PLUS SURCHARGE AND PENALTIES.

PETITIONER'S ARGUMENTS

Petitioner primarily claims that since its inception as a non-stock, non-profit electric cooperative, it is permanently exempt from payment of Income Tax pursuant to Section 39(a)(1) of PD No. 269, which provides:

> "Section 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative (1) shall be permanently exempt from paying income taxes, and (2) xxx"

Petitioner insists that by using the word "permanently" it continues to enjoy the said tax exemption. In fact, in Revenue Memorandum Circular (RMC) No. 72-2003[44], the BIR, through then Commissioner Guillermo L. Parayno, Jr., recognized the permanent tax exemption status of electric cooperatives, *viz.*:

> "A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:
>
> x x x x x x x x x
>
> 3. Income taxes for which they are directly liable [P.D. No. 269, Sec. 39 (a)(1)]; x x x"

[44]Tax Implications of Electric Cooperatives Registered with the National Electrification Administration and Cooperative Development Authority, October 20, 2003.

Finally, petitioner questions the relevancy of the cited cases of *Ernesto M. Maceda vs. Hon. Catalino Macaraig, Jr., et al.*[45] (*Maceda* case) and *Davao Oriental Electric Cooperative, Inc. vs. The Province of Davao Oriental*[46] (*Davao Electric* case) in the present controversy. Petitioner claims that respondent's reliance on the foregoing jurisprudence is misplaced considering that the *Maceda* case involves the National Power Corporation (NPC) and not electric cooperatives, while the *Davao Electric* case pertains to collection of delinquent real property taxes.

RESPONDENT'S ARGUMENTS

On the other hand, respondent believes that this Court has no jurisdiction to entertain the present case since the disputed assessment had already become final, executory and demandable. He continues that under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to RR No. 12-99, as amended, a taxpayer has thirty (30) days from receipt of a Formal Letter of Demand within which to protest the assessment. However, in the instant case, petitioner received the FLD on June 24, 2016, after which it filed a protest letter only on November 2, 2016, which is 101 days late.

Lastly, assuming *arguendo* that petitioner timely appealed the deficiency assessments against it, petitioner is liable to pay deficiency income tax by virtue of Fiscal Incentives Regulatory Board (FIRB) No. 24-87, which provides that effective July 1, 1987, income from electric service operations and other sources, including interest income from bank deposits and yield or any other similar arrangements, shall be taxable.

THE RULING OF THE COURT

After due consideration of the arguments and evidence presented by the parties, this Court finds no merit in the instant Petition.

Verily, one of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law.[47] An essential component of procedural due process is a set procedure laid down by law to be properly observed for the effective delivery of justice. This includes the manner and period of appeal, which is not only mandatory, but also jurisdictional.

Jurisdiction refers to the power of a court to hear and determine a case. The CTA, being a court of special jurisdiction, can take cognizance only of

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[45] G.R. No. 88291, May 31, 1991.
[46] G.R. No. 170901, January 20, 2009.
[47] Section 1, Article III, 1987 Philippine Constitution.

matters that are clearly within its jurisdiction.[48] As such, Section 7(a) of Republic Act (RA) No. 1125[49], as further amended by RA No. 9282[50], enumerates the instances where the CTA may exercise its appellate jurisdiction, *viz.*:

> "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;
> >
> > (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" *(Emphases supplied)*

Evidently, it is the CIR's decision or inaction involving disputed assessments that is cognizable by this Court. The rule is that for the CTA to acquire jurisdiction, an assessment must first be properly disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the CTA.[51] In this regard, it has been previously interpreted that a "disputed assessment" arises where a taxpayer questions an assessment and asks for reconsideration or cancellation of the same.[52]

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[48] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.
[49] An Act Creating the Court of Tax Appeals.
[50] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And For Other Purposes.
[51] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, et al., G.R. No. 148380, December 9, 2005.
[52] *Commissioner of Internol Revenue vs. Leonordo Villo*, et al., G.R. No. L-23988, January 2, 1968.

For this reason, Section 228 of the NIRC of 1997, as amended, provides the manner and the period upon which a taxpayer may question and appeal any deficiency tax assessment issued against it, *viz.*:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **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)*

Apropos thereto, Section 3.1.5 of RR No. 12-99[53] clearly defines what a "disputed assessment" is, to wit:

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

[53] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.

aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

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. xxx" *(Emphasis supplied)*

Clearly, upon receipt of the CIR's formal letter of demand, the taxpayer should file a protest within thirty (30) days to dispute the CIR's assessment; otherwise, the assessment shall become final.

To better grasp the application of the foregoing periods to the present case, a table of the antecedent material events is provided for ease of reference, to wit:

DATE	MATERIAL EVENT
September 29, 2014	Petitioner received LOA No. 098-2014-00000304[54] dated September 24, 2014 issued by OIC-Regional Director Alberto S. Olasiman of Revenue Region No. 16 – CDO City.
June 20, 2016	Petitioner received a PAN[55] dated May 11, 2016.
June 24, 2016	Respondent issued an FLD[56] reiterating payment of petitioner's tax liabilities, which was received by petitioner on the same day[57].
July 8, 2016	Petitioner sent a Letter of Protest with Request for Reinvestigation[58] dated July 7, 2016 to Regional Director Glen A. Geraldino of Revenue Region No. 16 – CDO City.
July 24, 2016	***End of the 30-day period within which to protest the FLD in accordance with Section 3.1.5 of RR No. 12-99.***
November 2, 2016	Petitioner filed a Protest Letter[59] dated October 25, 2016 with BIR Revenue Region No. 16 – CDO City.
April 4, 2017	Petitioner received a Letter[60] dated March 30, 2017 from Revenue District Officer Venerando B. Homez

[54] *Id.* at Note 3.
[55] *Id.* at Note 4.
[56] *Id.* at Note 7.
[57] As per Transcript of Stenographic Notes on the February 5, 2018 hearing, pp. 7-9.
[58] *Id.* at Note S.
[59] *Id.* at Note 8.

DATE	MATERIAL EVENT
	of BIR Revenue District No. 98.
May 4, 2017	Petitioner elevated the matter via a Petition for Review[61] with the CTA.

Apparently, respondent is correct in claiming that petitioner belatedly filed its protest to the Formal Letter of Demand. By failing to timely protest the FLD, the LOA No. 098-2014-00000304 dated September 24, 2014 became final, demandable and executory.

The Court stresses that while the right to appeal a decision of the CIR to the CTA is merely a statutory remedy, it must be observed, nonetheless, that "[i]f a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss".[62]

In view of the finding that respondent's deficiency assessments already became final, demandable and executory, this Court is deprived of jurisdiction to rule on the fallibility, much less belabor on the substantive validity, of the subject assessments.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

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[60] *Id.* at Note 9.
[61] *Id.* at Note 1.
[62] *Ker and Company, Ltd. vs. The Court of Tax Appeals and the Collector of Internal Revenue*, G.R. No. L-12396, January 31, 1962.

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.

ERLINDA P. UY
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