REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ENCORE RECEIVABLE MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2937
(CTA Case No. 10062)

Present:

RINGPIS-LIBAN, *Acting PJ*
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES *JJ.*

Promulgated:

NOV 1 1 2025 4:15m

x- x

DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review**[1] filed on July 4, 2024 by **Encore Receivable Management, Inc. (Encore/petitioner)** against the **Commissioner of Internal Revenue (CIR/respondent)** seeking the reversal of the Decision dated December 6, 2023 (**assailed Decision**)[2] and the Resolution dated May 23, 2024 (**assailed Resolution**)[3] rendered by the Special First Division of this Court (**Court in Division**) in the case entitled "*Encore Receivable Management, Inc. vs. Commissioner of Internal Revenue*" docketed as CTA Case No. 10062.[4]

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1 *Rollo*, pp. 8 to 29.
2 *Rollo*, pp. 32 to 43.
3 *Rollo*, pp. 45 to 47.
4 Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

The dispositive portions of the assailed Decision and the assailed Resolution read as follows:

Assailed Decision

> **WHEREFORE**, the Petition for Review, filed on April 8, 2019 by Encore Receivable Management, Inc., is **DISMISSED**, on jurisdictional ground.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE**, in light of the foregoing considerations, Encore's *Motion for Reconsideration* dated December 28, 2023 is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the Philippine branch office of Encore Receivable Management, Inc., a company incorporated and domiciled in the United States of America, with principal office address at 5/F Glorietta 5, IT Bldg. East Drive, Ayala Center, Makati City. Petitioner is also a PEZA-registered entity.[5]

Respondent is charged with the assessment and collection of all national internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith. He may be served with summons and other court processes at the Bureau of Internal Revenue (BIR), National Office Building, Senator Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City.[6]

THE ANTECEDENT FACTS

The factual antecedents, as narrated in the assailed Decision, are as follows:[7]

> On July 30, 2015, petitioner received a Letter of Authority (LOA) No. eLA201200033853 dated July 27, 2015, issued by Regional Director Jonas DP Amora, authorizing Revenue Officer Armina Anwar (RO Anwar) and Group Supervisor Elizabeth Arias (GS Arias) to examine its books of accounts and other accounting records for CY 2014.

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5 *Rollo*, p. 8.
6 *Rollo*, p. 9.
7 *Rollo*, pp. 32 to 43.

On November 6, 2017, petitioner received the BIR's Preliminary Assessment Notice (PAN) dated November 2, 2017, containing its projected deficiency taxes, plus interests, for CY 2014, tabled below:

Tax Type	Amount
Withholding Tax on Compensation (WTC)	₱30,069,180.52
Expanded Withholding Tax (EWT)	18,494,790.79
Final Withholding Tax (FWT)	687,955.11

On December 7, 2017, the BIR issued the Formal Assessment Notice, with Details of Discrepancies and Assessment Notices (FAN), assessing petitioner for deficiency taxes, plus interests, for CY 2014, broken down as follows:

Tax Type	Amount
WTC	₱30,288,282.81
EWT	18,629,555.06
FWT	692,967.97

On June 11, 2018, petitioner received the BIR's [Preliminary Collection Letter] PCL dated June 6, 2018, requesting the latter to pay deficiency taxes on WTC, EWT, and FWT, for CY 2014, in the total amount of ₱49,610,805.84, detailed below:

Tax Type	Basic	Interest	Total
WTC	₱19,041,032.08	₱11,247,250.73	₱30,288,282.81
EWT	11,711,656.21	6,917,898.85	18,629,555.06
FWT	435,641.25	257,326.72	692,967.97
Total	**₱31,188,329.54**	**₱18,422,476.30**	**₱49,610,805.84**

On June 26, 2018, petitioner received the BIR's [Final Notice Before Seizure] FNBS dated June 18, 2018, granting it the last opportunity to settle its above-stated tax liabilities.

On July 11 and 26, 2018, petitioner filed separate administrative protests (Requests for Reinvestigation), challenging the BIR's PCL and FNBS, respectively. In both administrative protests, petitioner argued that the tax assessments issued against it for CY 2014, from which such collection letters were based, are void, because: (1) it never received the FAN for said year; and, (2) the BIR's right to assess taxes is barred by prescription, and are bereft of merit.

On September 10, 2018, petitioner filed its letter of even date with the BIR, submitting pertinent documents in support of its administrative protest on the PCL.

On April 8, 2019, petitioner filed a Petition for Review, docketed as CTA Case No. 10062.

On July 29, 2019, respondent filed his Answer with Motion to Dismiss, to which petitioner filed its Reply/Opposition on August 27, 2019.

Under Resolution dated December 20, 2019, respondent's Motion to Dismiss, embodied in his Answer was denied, for lack of merit.

On January 28, 2021, the Pre-Trial Conference was held, whereby the parties undertook to submit a Joint Stipulation of Facts and Issues, embodying the matters in said proceeding. Additionally, we set the dates for the commissioner's hearing, for the marking of the parties' respective evidence, along with the trial dates for the presentation of their respective witnesses.

On February 11, 2021, the parties submitted, and we approved, their Joint Stipulation of Facts and Issues (Between Petitioner Encore Receivable Management, Inc. and Commissioner of Internal Revenue).

On May 26, 2021, a Pre-Trial Order was issued.

Trial followed.

Petitioner presented: (1) Ms. Amie A. Naz; (2) Ms. Merdilyn A. Angeles; (3) Mr. Roland Ngo; and (4) Independent Certified Public Accountant Madonna Mia S. Dayego, as its witnesses.

On October 27, 2021, petitioner posted its Formal Offer of Evidence, to which respondent posted his Comment thereto on November 2, 2021.

By Resolution dated April 18, 2022, the pieces of evidence offered by petitioner were admitted, save for Exhibits "P-56," "P-57," "P-58," "P-59" and "P-59-a," as these documents were not listed in the Pre-Trial Order dated May 26, 2021. Petitioner rested its case.

Respondent presented Group Supervisor Marivel G. Bello (GS Bello) as his sole witness.

On July 7, 2022, Respondent's Formal Offer of Evidence (With Attached Respondent's Documentary Exhibits) was posted, to which petitioner filed its Comment on July 20, 2022.

By Resolution dated September 20, 2022, the pieces of evidence offered by respondent were admitted.

Through Minute Resolution dated December 7, 2022, this case was submitted for decision, considering the Memorandum for Respondent, and petitioner's Memorandum, respectively filed on October 28, 2022, and November 2, 2022.

On December 6, 2023, the Court in Division rendered the assailed Decision, dismissing the case on the ground of lack of jurisdiction. It held that petitioner failed to timely perfect an appeal, as the *Petition for Review* was filed beyond the 30-day reglementary period.

Dissatisfied with the ruling, petitioner filed, on December 28, 2023, a *Motion for Reconsideration*. The Court in Division, however, denied the same for lack of merit in its assailed Resolution.

Hence, the present *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 19, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*, seeking an additional period of 15 days from June 19, 2024, or until July 4, 2024, within which to file its petition.[8] The Court, in a Minute Resolution dated June 24, 2024, granted the *Motion*.[9]

Subsequently, on July 4, 2024, petitioner filed before the Court the present *Petition for Review*, praying that the assailed Decision and assailed Resolution be reversed and set aside and the tax assessment for 2014, the Final Notice Before Seizure (FNBS) dated June 18, 2018, the Preliminary Collection Letter (PCL) dated June 6, 2018, be declared null and void, for being violative of its right to due process. Petitioner also prays that respondent be directed to cancel and withdraw the assessments for alleged deficiency tax for the CY 2014 in the aggregate amount of ₱49,610,805.84.[10]

In a Resolution dated July 30, 2024,[11] the Court directed respondent to file his Comment on the *Petition* within 10 days from notice. On September 10, 2024, a Records Verification was issued by the Judicial Records Division (JRD) of this Court stating that respondent failed to file his comment on the present *Petition*.

Thereafter, the case was deemed submitted for decision, *sans* respondent's Comment, on October 10, 2024.[12]

THE ISSUE

In its *Petition*, the sole assignment of error raised by petitioner is whether the Court in Division erred in dismissing petitioner's *Petition for Review* dated April 8, 2019.

Petitioner's arguments

Petitioner contends that the Court in Division has jurisdiction over the present case because its judicial appeal was filed within the prescriptive period prescribed under the National Internal Revenue Code (NIRC) of 1997, as amended, specifically, within 30 days after the expiration of the 180-day period within which respondent must act on its protest or administrative appeal. ℳ

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[8] *Rollo*, pp. 1 to 5.
[9] *Rollo*, p. 7.
[10] *Rollo*, p. 27.
[11] *Rollo*, p. 48.
[12] *Rollo*, p. 50.

Petitioner claims that it did not receive a copy of the Formal Assessment Notice/Formal Letter of Demand (FAN/FLD) or the Final Decision on Disputed Assessment (FDDA), but only the PCL and FNBS, which were served through a third-party company unauthorized to receive notices or correspondences on its behalf. Nevertheless, petitioner proceeded to file a protest and submit additional documents based on the PCL and the FNBS it received.

Petitioner further avers that no Letter of Authority (LOA) was issued in favor of the revenue officers who continued the audit. Assuming that the FNBS and PCL were the final decisions of the BIR that amounted to a FAN/FLD, petitioner argues that the same violated its right to due process since they did not contain any rationale, law, rule, jurisprudence or factual basis by which the decision was made.

Finally, petitioner posits that it should not be faulted by respondent's repeated violation of its right to due process. Since there was no new LOA issued and respondent issued the PCL and FNBS without any factual or legal bases, the basic right of petitioner to due process was blatantly violated.

THE RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

The present Petition for Review was timely filed.

Section 3 (b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> Sec. 3. Who may appeal; period to file petition. — x x x
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file its *Petition.*

Records show that the assailed Resolution of the Court in Division was served on petitioner on June 4, 2024.[13] Petitioner, thus, had 15 days from such receipt, or until June 19, 2024, to file its *Petition* before this Court.

On June 19, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*.[14] On June 24, 2024 this Court granted petitioner an additional period of 15 days from June 19, 2024, or until July 4, 2024, within which to file the *Petition for Review*.

The instant *Petition* was, thus, timely filed on July 4, 2024.

The Court has jurisdiction over "other matters" arising under the NIRC of 1997, as amended.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[15] This Court, being a court of special jurisdiction, can take cognizance only on matters that are clearly within its jurisdiction.[16]

Pertinent to the determination of this Court's jurisdiction over the instant case is Section 7 (a) (1) of Republic Act (R.A.) No. 1125,[17] as amended by R.A. No. 9282,[18] 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 Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

Similarly, Section 3(a)(1) of Rule 4 of the RRCTA expressly enumerates, among others, the cases falling within the jurisdiction of the Court in Division, to wit:

[13] *Rollo*, p. 44.
[14] *Rollo*, pp. 1 to 5.
[15] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[16] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.
[17] An Act Creating the Court of Tax Appeals, June 16, 1954.
[18] 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, Approved: March 30, 2004.

> 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**; (*Emphasis supplied*)

Based on the foregoing, the appellate jurisdiction of this Court is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[19]

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines*,[20] the Supreme Court elucidated that this Court's appellate jurisdiction covers not only disputed assessments and refunds but also "other matters" arising under the NIRC of 1997, as amended, such as the issue of prescription of the BIR's right to collect taxes, even in the absence of a formal assessment, *viz.*:

> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. **What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.**
>
> Thus, on the strength of such observation, we have previously ruled that **the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC)** or related laws administered by the Bureau of Internal Revenue (BIR). (*Emphasis supplied*)

In the instant case, the principal issue forwarded by petitioner before the Court in Division is whether the collection efforts of respondent, through the issuance of the PCL dated June 6, 2018 and FNBS dated June 18, 2018, are void for failure to issue a FAN/FLD to petitioner, thereby resulting in the prescription of respondent's right to assess the alleged deficiency taxes.[21]

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[19] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[20] G.R. No. 169225, November 17, 2010.
[21] *Joint Stipulation of Facts and Issues*, Division Docket - Vol. I, p. 513; *Petition for Review*, Issues, Division Docket – Vol. I, p. 13.

Section 2 of the NIRC of 1997, as amended, defines the powers and duties of the BIR as follows:

> Sec. 2. Powers and Duties of the Bureau of Internal Revenue. – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith**, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. *(Emphasis supplied)*

Clearly, the issuance of the collection letters, *i.e.,* PCL and FNBS, are pursuant to the CIR's power to collect arising under the NIRC. As such, they are covered by the term "other matters" over which this Court has jurisdiction.

Indeed, jurisprudence[22] has consistently held that this Court's jurisdiction is not limited to cases which involve decisions of the respondent on matters relating to assessment or refunds but extends to other actions arising under the NIRC of 1997, as amended.

Accordingly, the Court finds that it is vested with jurisdiction over the subject matter of the instant case. The *Petition*, however, must nonetheless be dismissed for having been filed out of time, as will be further discussed below.

The judicial appeal before the Court in Division was filed out of time.

The Court agrees with the observation of the Court in Division that the circumstances leading to petitioner's judicial appeal were tailored after Section 228 of the NIRC of 1997, as amended, which provides:

> SECTION 228. Protesting of Assessment. - xxx
>
> 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.

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[22] *Commissioner of Internal Revenue vs. Pacific Hub Corporation*, G.R. No. 252944, November 27, 2024; *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023; *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022; *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021.

> 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 added*)

Specifically, upon receipt of the PCL on June 11, 2018 and the FNBS on June 26, 2018, petitioner filed its requests for reinvestigation on July 11, 2018 and July 26, 2018, respectively. Thereafter, on September 10, 2018, or within 60 days from the filing of the said protests, petitioner submitted its supporting documents, allegedly reckoning therefrom the 180-day period within which respondent was bound to act. There being no action on the protest, petitioner proceeded to count another 30 days, or until April 8, 2019, within which to elevate the matter to the Court. Consequently, petitioner filed its *Petition for Review* on April 8, 2019.

Petitioner, however, is mistaken in following the procedures laid down in Section 228 of the NIRC of 1997, as amended, as the same is inapplicable to the present case.

Section 228 of the NIRC of 1997, as amended, prescribes the procedure for protesting an assessment. Clearly, for the provisions of Section 228 to take effect, ***there must first be an assessment.*** Jurisprudence has described an assessment as a notice that contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and protests begin to accrue against the taxpayer.[23]

Moreover, a plain reading of Section 228 reveals that an assessment must, at the very least, be in writing and must clearly state both the legal and factual basis thereof. Hence, not all notices and letters issued by the BIR constitutes an assessment.

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[23] *Bakbak (1 and 2) Native Chicken Restaurant, represented by the owner Rosselle G. Barco vs. Secretary of Finance, et. al.*, G.R. No. 217610, September 2, 2020.

To reinforce this application, Section 3.1.14 of Revenue Regulations (RR) No. 18-2013,[24] amending RR No. 12-99,[25] expressly provides that the administrative protest contemplated under Section 228 is directed against the FLD/FAN:

> 3.1.4. Disputed Assessment. — The taxpayer or its authorized representative or tax agent may **protest administratively** **<u>against the aforesaid FLD/FAN</u>** within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of the protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) 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.

In *Samar I-Electric Cooperative vs. Commissioner of Internal Revenue*,[26] citing *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*,[27] the Supreme Court held that the law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice, and that the alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. Thus:

> Both the CTA and the CA concluded that the deficiency tax assessment merely itemized the deductions disallowed and included these in the gross income. It also imposed the preferential rate of 5% on some items categorized by Enron as costs. The legal and factual bases were, however, not indicated.
>
> The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency,

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[24] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment. Issued on November 28, 2013.

[25] 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. Issued on 06 September 1999.

[26] G.R. No. 193100, December 10, 2014.

[27] G.R. No. 166387, January 19, 2009.

> informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.
>
> We disagree. **The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment.** These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. **Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.**

From the foregoing, it is evident that the protest under Section 228 of the NIRC of 1997, as amended, is intended to be exercised only against an assessment, *i.e.*, a FAN/FLD.

In the instant case, none of the required contents of an assessment are present. As correctly pointed out by petitioner, the PCL and FNBS did not contain any rationale, law, rule, jurisprudence or factual basis by which the decision was made.[28] These collection letters, therefore, cannot be deemed assessments within the contemplation of law.

More importantly, this Court affirms the finding of the Court in Division that the requests for reinvestigation filed by petitioner on July 11, 2018 and July 26, 2018 were not directed against an assessment issued by the BIR. What petitioner in fact sought to contest were collection letters, *i.e.*, the PCL and FNBS, premised on its supposed non-receipt of the FAN for CY 2014.

Given these circumstances, the present appeal cannot be treated as one involving a disputed assessment where Section 228 may find application. Rather, it properly falls under acts of the respondent on "other matters" arising from the NIRC of 1997, as amended, and other laws administered by the BIR, as previously discussed. Petitioner should have filed its judicial appeal based on the period provided under Section 11 of R.A. No. 1125, as amended by R.A. No. 9282 which reads:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the

[28] Par. 63 of the *Petition for Review*, *Rollo*, p. 23.

> Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx (*Emphasis supplied*)

At this juncture, the Court quotes with approbation the following disquisitions of the Court in Division:

> What then is the correct remedy?
>
> Petitioner should have challenged the PCL and FNBS directly before the CTA, under the premise that it did not receive the BIR's FAN from which the collection letters were based. xxx
>
> xxx xxx xxx
>
> As currently formulated, our jurisdiction over respondent's decision or action embraces other matters arising under the NIRC, as amended. Among the matters specified in Section 2 of the same Code, is the BIR's authority to collect all national internal revenue taxes, fees, and charges. This includes the issuance of the rules, regulations, and measures in pursuit thereof. In addition, an appeal must be seasonably taken from such action, through the filing of a Petition for Review, within thirty (30) days from receipt thereof.
>
> The BIR's PCL dated June 6, 2018, and FNBS dated June 18, 2018 were received by petitioner on June 11, 2018, and June 26, 2018, respectively. Both BIR letters sought to collect deficiency taxes covering CY 2014 from petitioner. Counting thirty (30) days from June 11, 2018, and June 26, 2018, petitioner had, at most, until July 11, 2018, and July 26, 2018, to respectively impugn the PCL and FNBS. Ergo, petitioner belatedly filed its Petition for Review on April 8, 2019, depriving us of jurisdiction over CTA Case No. 10062.

A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, is a mere statutory right that may be waived or lost, as in this case.[29] This Court, thus, finds no reversible error committed by the Court in Division when it dismissed the appeal on the ground of lack of jurisdiction for failure of petitioner to file the *Petition for Review* within the 30-day prescriptive period.

WHEREFORE, in light of the foregoing considerations, the instant **Petition for Review** is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision, dated December 6, 2023 and the assailed Resolution, dated May 23, 2024, of the Court in Division in CTA Case No. 10062 are hereby **AFFIRMED.**

[29] *Cecilia Teodoro Dayrit, et. al. vs. The Honorable Fernando A. Cruz, et. al.*, G.R. No. L-39910, September 26, 1988 and *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, please see Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

With due respect, I join Justice Villena's DO.
LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
NOV 11 2025 4:40

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With due respect to my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I am unable to subscribe to the conclusions reached in her *ponencia* based on the following legal grounds:

1) The present controversy mirrors *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[1] (**V.Y. Domingo**), where the Supreme Court ruled that only the Commissioner of Internal Revenue's (**CIR**'s) final decision on a disputed assessment, not the assessment itself, may be appealed to the Court of Tax Appeals (**CTA**);

2) The *ponencia*'s reckoning of the appeal period from the Preliminary Collection Letter[2] (**PCL**) and Final Notice Before Seizure[3] (**FNBS**)

[1] G.R. No. 221780, 25 March 2019.
[2] Exhibit "P-6", Division Docket, Volume II, p. 855.
[3] Exhibit "P-8", id., p. 866.

disregards that it was the CIR's own actions which engendered the uncertainty; given such ambiguity, confusion as to the proper remedy was inevitable and petitioner cannot be faulted for prudently exhausting administrative remedies under Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended;

3) The records show that a Formal Letter of Demand (**FLD**) was issued on 07 December 2017[4], and under *Basilan Estates, Inc. v. The Commissioner of Internal Revenue and the Court of Tax Appeals*[5] (**Basilan Estates**), an assessment exists once released or mailed by the Bureau of Internal Revenue (**BIR**). Hence, there is undeniably an assessment in this case and Section 228 of the NIRC of 1997, as amended, squarely applies, contrary to what the *ponencia* suggests; and

4) Finally, even if petitioner could have directly appealed the PCL and FNBS to the CTA as an exception to the doctrine of exhaustion of administrative remedies, its decision to pursue the administrative route should not be visited with prejudice, since the doctrine exists for the convenience of the parties and the courts, with exceptions that are permissive, not mandatory.

Settled is the rule that if there is an assessment pursuant to Section 228[6] of the NIRC of 1997, as amended, it is neither the assessment nor the FLD that is appealable to the CTA but the decision of the CIR on a disputed assessment – whether by express denial or by inaction within the period prescribed by law.[7]

The *ponencia* concludes that, while the CTA has jurisdiction over the subject matter under its 'other matters' jurisdiction, petitioner Encore Receivable Management, Inc.'s (**petitioner**'s) appeal to the CTA Special First Division was nonetheless filed out of time, reasoning that the PCL[8] and the FNBS[9] constituted collection acts that should have been directly appealed to the CTA within thirty (30) days from receipt, pursuant to Section 11[10] of Republic Act (**RA**) No. 1125[11], as amended by RA 9282.[12]

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4 Facts, Decision dated 06 December 2023, *rollo*, p. 33.
5 G.R. No. L-22492, 05 September 1967.
6 **SEC. 228**. *Protesting of Assessment.*
7 See *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, supra at note1.
8 Supra at note 2.
9 Supra at note 3.
10 **Sec. 11**. *Who may appeal; mode of appeal; effect of appeal.*
11 AN ACT CREATING THE COURT OF TAX APPEALS.
12 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

I, respectfully, disagree.

At this juncture, I further expound upon the legal anchors or authorities of my dissent.

The present case finds resonance in *V.Y. Domingo*. In that case, the taxpayer, after receiving a Preliminary Assessment Notice (**PAN**) for deficiency income and value-added taxes, later received a PCL advising it of corresponding assessment notices. Instead of protesting the assessments before the BIR, the taxpayer directly filed a Petition for Review before the CTA to annul the assessments and the PCL for being allegedly time-barred. The Supreme Court dismissed the case, ruling that it is neither the assessment nor the demand letter that may be appealed to the CTA but only the CIR's final decision on a disputed assessment. By failing to file a protest, the taxpayer violated the doctrine of exhaustion of administrative remedies, causing the assessments to become final, executory and unappealable upon the lapse of the 30-day protest period, to wit:

> ...
>
> That V.Y. Domingo believed that the PCL "undeniably shows" the intention of the CIR to make it as its final "decision" did not give it cause of action to disregard the procedure set forth by the law in protesting tax assessments and act prematurely by filing a petition for review before the courts. The word "decisions" in the aforementioned provision of R.A. No. 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments. **Definitely, said word does not signify the assessment itself.** Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the CTA only upon receipt of the decision of the Collector on the disputed assessment.[13]
>
> ...

Similarly, in the instant case, petitioner did not receive an FLD but received a PCL on 11 June 2018 and an FNBS on 26 June 2018, demanding payment of alleged deficiency taxes. Following *V.Y. Domingo*, petitioner filed a protest with Request for Reinvestigation[14] against the PCL and FNBS within the 30-day reglementary period on 11 July and 26 July 2018, respectively, and submitted additional documents on 10 September 2018[15] within the sixty (60)-day window. When no decision was rendered by respondent CIR

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[13] Supra at note 2; Citations omitted and emphasis supplied.
[14] Exhibits "P-7" and "P-9", Division Docket, Volume II, pp. 856-865 and 867-876, respectively.
[15] Since the 60th day fell on a Sunday.

(**respondent**) within 180 days, petitioner timely filed a Petition for Review before the CTA Special First Division on 08 April 2019, within the 30-day period from such inaction.

From the foregoing set of facts, it is clear that petitioner did not act in disregard of the law or rules. Rather, it followed the very process outlined in *V.Y. Domingo*, *i.e.*, to protest first, then judicial appeal only after BIR's express denial or inaction. To now hold that such recourse was belated is to penalize the taxpayer for adhering to the very process the Supreme Court has previously required.

The majority's strict application of the 30-day period from receipt of the PCL and FNBS disregards the nuanced approach adopted by the Supreme Court in cases **where the BIR's actions create ambiguity.**[16] Where the taxpayer receives no FLD but only a collection letter, uncertainty as to the proper course of action is both natural and unavoidable. Hence, petitioner cannot be faulted in exhausting all available administrative remedies under Section 228[17] of the NIRC of 1997, as amended, before elevating the matter to the CTA.

True, in *V.Y. Domingo*, the taxpayer ultimately received a copy of the FLD, unlike in the instant case. Yet this distinction is of no moment. The non-receipt of the FLD does not negate the fact that an assessment was made. As the records bear, respondent **issued** an FLD on 07 December 2017.[18] In the landmark case of *Basilan Estates, Inc. v. Commissioner of Internal Revenue and the Court of Tax Appeals*[19], the Supreme Court declared that an assessment is deemed made **when released, mailed, or sent by the CIR, regardless of receipt**. An assessment exists once the BIR issues a written notice of liability, though for validity and enforceability, due process demands that the taxpayer be properly apprised of its factual and legal bases. Thus, if the taxpayer does not receive the FLD, or if the same fails to state the factual and legal bases, the assessment is void—not nonexistent—for violation of due process.

Thus, contrary to the disquisition of the *ponencia*, Section 228 of the NIRC of 1997, as amended, applies. To hold otherwise is to deny petitioner both the protection and remedies afforded by law in disputing an assessment.

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16 Such as in the cases of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, 09 December 2005 and *Allied Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 175097, 05 February 2010.

17 Supra at note 1.

18 Supra at note 4.

19 G.R. No. L-22492, 05 September 1967.

Moreover, even assuming petitioner could have directly appealed the PCL and FNBS to the CTA as an exception to the doctrine of exhaustion of administrative remedies, its decision to exhaust administrative remedies should not be visited with adverse consequences. The doctrine exists for the convenience of the parties and the courts, and out of respect for administrative expertise.[20] The recognized exceptions are permissive, not mandatory.[21] Thus, a taxpayer who chooses to follow the administrative route despite the availability of an exception does not lose any right or incur any penalty thereby. Indeed, such prudence may foster early resolution without or minimal judicial intervention.

All told, I vote to **GRANT** the Petition for Review, **REVERSE AND SET ASIDE** the Decision dated 06 December 2023 and the Resolution dated 23 May 2024, of the Special First Division in CTA Case No. 10062. Consequently, the Court *En Banc* should **GIVE DUE COURSE** to petitioner's Petition for Review and **PROCEED** to determine petitioner's deficiency tax liability, if any, for the assessments covering the calendar year (CY) 2014.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[20] See *Samar II Electric Cooperative, Inc. (SAMELCO II) and its Board of Directors, composed of Deborah T. Marco, et. al., v. Ananias D. Seludo, Jr.*, G.R. No. 173840, 25 April 2012.

[21] See *Andre Charles Nagel v. The Board of Commissioners, Bureau of Immigration*, G.R. No. 244737, 23 October 2023. Since the burden is on the party to establish the exception, the court is not required to apply an exception unless properly shown.