REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

JEANIFER P. AJOC,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10642

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

DEC 17 2024
4:13 pm

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DECISION

FERRER-FLORES, J.:

At bar is the *Petition for Review* filed by on October 27, 2021 praying for the Court to declare the assessments for taxable year (TY) 20014 null and void for having been issued in violation of the due process requirements under the law.[1]

THE PARTIES

Petitioner **Jeanifer P. Ajoc** is of legal age, married, Filipino citizen, with postal address at Blk. 17 Lot 38 Phase 1 Yakal St. Margarita Village, Makinlam, Tagum City. She was the sole proprietress of Miners Sack Trader, a sole proprietorship whose business registration was cancelled effective January 2015.[2]

On the other hand, respondent is the **Commissioner of Internal Revenue (CIR)** charged with, among other powers and duties, enforcement of revenue laws and collection of national internal revenue taxes and the

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[1] Statement of the Case, Pre-Trial Order dated August 4, 2022, Docket, p. 166.
[2] Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 153.

power to decide tax protests, and holds office at the Bureau of Internal Revenue (BIR) National Office, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On July 20, 2015, respondent, through BIR Revenue District No. 112 – Tagum City, issued the *Letter of Authority* (LOA) No. eLOA 201100057073 of even date for TY 2014,[4] authorizing Revenue Officer (RO) Lemuel Duadua and Group Supervisor (GS) Eddie Leo II Galera of Revenue District Office (RDO) No. 112 – Tagum, Davao Del Norte, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2014.[5]

Respondent thereafter issued against petitioner the *Preliminary Assessment Notice* (PAN) dated April 18, 2016 (with attached *Details of Discrepancies*)[6], finding petitioner liable for deficiency income tax and value-added tax (VAT) in the aggregate amount of ₱9,376,750.26.[7]

On June 2, 2016, petitioner filed with the BIR the letter dated May 16, 2016,[8] acknowledging receipt of the said PAN.

Thereafter, respondent issued the *Formal Letter of Demand* (FLD) dated July 11, 2016,[9] with attached *Assessment Notices*[10] and *Details of Discrepancies*,[11] finding petitioner liable for deficiency income tax and VAT in the aggregate amount of ₱9,376,750.26 for TY 2014.

On March 8, 2018, petitioner filed a letter dated February 24, 2018 addressing the PAN dated April 18, 2016.[12]

Respondent then issued against petitioner the *Final Decision of Disputed Assessment* (FDDA) dated April 18, 2018,[13] finding petitioner liable for deficiency income tax and VAT in the aggregate amount of ₱11,659,492.30, inclusive of surcharges, interest, and compromise penalties, for TY 2014.

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3 Par. 2, Joint Stipulation of Facts, JSFI, Docket, p. 153.
4 Par. 3, Joint Stipulation of Facts, JSFI, Docket, p. 153.
5 Exhibits "P-2" and "R-1", BIR Records (Exhibit "R-16"), p. 30.
6 Exhibit "P-3", Docket, at p. 181; Exhibit "R-5-A", BIR Records (Exhibit "R-16"), p. 146.
7 Par. 4, Joint Stipulation of Facts, JSFI, Docket, p. 154; Exhibit "P-3", Docket, pp. 179 to 181; Exhibit "R-5", BIR Records (Exhibit "R-16"), pp. 147 to 148.
8 BIR Records (Exhibit "R-16"), p. 161.
9 Exhibit "R-7", BIR Records (Exhibit "R-16"), pp. 154 to 155.
10 Exhibits "R-8" and "R-8-A", BIR Records (Exhibit "R-16"), pp. 152 to 153.
11 Exhibit "R-7-A", BIR Records (Exhibit "R-16"), p. 151.
12 Exhibit "R-14", BIR Records, p. 221.
13 Par. 5, Joint Stipulation of Facts, JSFI, Docket, p. 154; Exhibit "P-4", Docket, pp. 182 to 184; Exhibit "R-12", BIR Records (Exhibit "R-16"), pp. 214 to 216.

On May 22, 2018, petitioner filed with respondent the *Legal Petition Notice* dated May 16, 2018.[14]

Respondent issued against petitioner the *Decision* dated May 19, 2021[15] affirming the FDDA,[16] which petitioner received on August 2, 2021.[17]

PROCEEDINGS BEFORE THIS COURT

Aggrieved, petitioner filed the present *Petition for Review* on October 27, 2021.[18]

Respondent filed his *Answer* through registered mail on March 2, 2022,[19] while the *BIR Records* for this case was transmitted to the Court on March 14, 2022.[20]

The Pre-Trial Conference was held on June 9, 2022.[21] Prior thereto, *Respondent's Pre-Trial Brief* was filed on May 27, 2022,[22] while petitioner's *Pre-Trial Brief* was filed on June 6, 2022.[23]

On July 11, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[24] which the Court approved and admitted in the Resolution dated July 20, 2022,[25] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on August 4, 2022.[26]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered her testimony to primarily prove the material allegations in the present *Petition for Review*.[27]

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14 Exhibit "P-5", Docket, pp. 185 to 198.
15 Par. 6, Joint Stipulation of Facts, JSFI, Docket, p. 154.
16 Exhibit "P-1", Docket, pp. 28 to 32; Exhibit "R-15", BIR Records (Exhibit "R-16"), pp. 279 to 283.
17 Par. 7, Petition for Review, Docket p. 2.
18 Docket, pp. 6 to 26.
19 Docket, pp. 73 to 88.
20 *Compliance* dated March 14, 2022, Docket, pp. 99 to 101.
21 Notice of Pre-Trial Conference dated March 9, 2022, Docket, pp. 91 to 92; Minutes of the hearing held on, and Order dated, June 9, 2022, Docket, pp. 148, and 151 to 152, respectively.
22 Docket, pp. 135 to 139.
23 Docket, pp. 142 to 146.
24 Docket, pp. 153 to 157.
25 Docket, p. 159.
26 Docket, pp. 166 to 171.
27 *Judicial Affidavit (Witness Jeanifer P. Ajoc)* (Exhibit "P-7"), Docket, pp. 55 to 62; Minutes of the hearing held on, and Order dated, September 1, 2022, Docket, pp. 172 to 174.

On September 12, 2022, petitioner filed her *Formal Offer of Evidence*,[28] to which respondent submitted his *Comment (on Petitioner's Formal Offer of Evidence)* on September 13, 2022.[29] In the Resolution dated September 29, 2022,[30] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of ROs Markneil Collado[31] and Lemuel C. Duadua.[32]

On March 7, 2023, *Respondent's Formal Offer of Evidence* was filed.[33] Petitioner then filed her *Comment/Objections (Re: Respondent's Formal Offer of Evidence dated 7 March 2023)* on March 21, 2023.[34] In the Resolution dated May 26, 2023,[35] the Court admitted all of respondent's exhibits, except Exhibit "R-14", for failure to correspond with the document actually marked.

On June 29, 2023, respondent then filed his *Omnibus Motion [(a) Motion for Partial Reconsideration; (b) Motion to Set Commissioner's Hearing; and (c) Motion to Defer Filing of Respondent's Memorandum]*.[36] Petitioner failed to file her comment thereon.[37]

Petitioner submitted her *Memorandum* on September 4, 2023.[38]

In the Resolution dated October 9, 2023,[39] the Court partially granted respondent's *Omnibus Motion*, thereby reiterating that there was no need for another Commissioner's Hearing, and admitting Exhibit "R-14".

Respondent's *Memorandum* was posted on November 16, 2023.[40] Thereafter, the case was submitted for decision on December 21, 2023.[41]

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[28] Docket, pp. 175 to 178.
[29] Docket, pp. 201 to 203.
[30] Docket, pp. 207 to 208.
[31] *Judicial Affidavit of Revenue Attorney Markneil S. Collado*, Docket, pp. 108 to 112; Minutes of the hearing held on, and Order dated, January 26, 2023, Docket, pp. 214 and 222, respectively.
[32] *Judicial Affidavit of Revenue Officer Lemuel C. Duadua*, Docket, pp. 119 to 129; Minutes of the hearing held on, and Order dated, February 16, 2023, Docket, pp. 219 to 221.
[33] Docket, pp. 224 to 233.
[34] Docket, pp. 236 to 244.
[35] Docket, pp. 247 to 248.
[36] Docket, pp. 249 to 252.
[37] Records Verification Report dated August 30, 2022 issued by the Court's Judicial Records Division, Docket, p. 256.
[38] Docket, pp. 257 to 273.
[39] Docket, pp. 276 to 278.
[40] Docket, pp. 279 to 299.
[41] Minute Resolution dated December 21, 2023, Docket, p. 276.

THE ISSUE

The sole issue to be resolved by the Court, as stipulated by the parties, is whether petitioner is liable for deficiency income tax and VAT in the aggregate amount of ₱11,659,492.30 for TY 2014 inclusive of surcharge, interest and compromise penalty.[42]

Petitioner's arguments:

In support of her *Petition for Review*, petitioner forwards the following contentions:

First, petitioner argues that respondent violated her right to due process for failure to validly issue a FAN and/or FLD; hence, any assessments issued against her are void. In fact, her actions as well as respondent's support her claim of non-receipt of FAN with FLD.

Second, respondent's right to collect had already prescribed. At best, petitioner's Reply to PAN was treated as a request for reconsideration, and accordingly, the running of the prescriptive period for collection was never interrupted or suspended.

Third, the alleged waiver executed by petitioner is not valid. Petitioner points out that there was no date of acceptance by the BIR and she was not furnished a copy of the same.

Lastly, on February 17, 2021, the BIR issued a *Certificate of No Outstanding Liability* to her relative to the closure of her business. This only means that the BIR itself had already cleared petitioner of any tax liability with respect to her sole proprietorship business; otherwise, the BIR would not have issued the same.

Respondent's counter-arguments:

Foremost, respondent contends that this Court has no jurisdiction over the present case considering that the assessment against petitioner has already become final, executory, and demandable.

Assuming without conceding that the Court has jurisdiction, the assessments are valid and not contrary to law as there was no violation of due process requirement. The FLD was properly served, and that petitioner

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[42] Joint Statement of Issue to be Tried or Resolved, JSFI, Docket, p. 154.

executed a valid waiver and, thus, the period to assess was effectively extended.

Further assuming that the waiver executed is defective, still, the right of respondent to assess and collect has not yet prescribed considering that petitioner committed substantial underdeclaration. Petitioner failed to present sufficient evidence to overthrow the findings of respondent and, thus, the assessments should stand.

THE COURT'S RULING

The *Petition for Review* must be dismissed. The Court has no jurisdiction to take cognizance of the same as the assessments had become final and executory.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[43]

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

> Section 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: xxx
>
> xxx xxx xxx
>
> The taxpayer 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 <u>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</u>**

[43] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

> **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. *(Emphases and underscoring added)*

Based on the foregoing provision, a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof, by filing either a request for reconsideration or reinvestigation, **in such form and manner as may be prescribed by implementing rules and regulations.** Moreover, within 60 days from the filing of a protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

Implementing the above-quoted Section 228, particularly the *form and manner* of filing of the requests for reconsideration and reinvestigation, Section 3 of Revenue Regulations (RR) No. 12-99,[44] as amended by RR No. 18-2013,[45] provides, in part, as follows:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –*
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[46] 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

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44 SUBJECT: 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

45 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

46 That is, the *"Formal Letter of Demand and Final Assessment Notice"*.

> 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 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. (Emphases and underscoring added)*
>
> xxx xxx xxx

On the basis of the foregoing provisions, the form and manner of protests to be filed by the concerned taxpayer has been clearly and distinctively defined. Particularly, a distinction has been made between the two (2) types of protest, *i.e.*, a *request for reconsideration* and a *request for reinvestigation*. Thus, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside.[47]

In *Commissioner of Internal Revenue vs. Court of Tax Appeals-Third Division, et al.*,[48] the Supreme Court ruled:

> When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and the Court of Tax Appeals has no jurisdiction.
>
> xxx xxx xxx
>
> Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period, <u>but also 'in such form and manner as may be prescribed by implementing rules and regulations.'</u>** Respondent's April 29, 2015 letter did not comply with three requirements of Revenue Regulations No. 18-2013.
>
> The Court of Tax Appeals is a court of special jurisdiction. Section 7 of Republic Act No. 9282 states what matters involving Commissioner of Internal Revenue are within its exclusive appellate jurisdiction:
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> SECTION 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided

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[47] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

[48] G.R. No. 239464, May 10, 2021.

> (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;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under 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[.]

In respondent's Petition for Review, it contended that its Petition was timely filed because it was assailing the July 13, 2015 letter, which it claimed was petitioner's 'final decision on the matter of petitioner's protest against the deficiency tax assessments for the taxable year 2011.'

This argument is inaccurate.

In *Commissioner of Internal Revenue v. Villa*,[49] this Court held that the Court of Tax Appeals' jurisdiction was over the Commissioner of Internal Revenue's decision on the protest against an assessment, and not the assessment itself. Thus, the period to invoke judicial review must be counted from receipt of the Commissioner's decision on the disputed assessment.

Here, however, <u>respondent's protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code</u>. Respondent erred in claiming that the July 13, 2015 letter was petitioner's 'final decision' on its protest, there being no valid protest to speak of. xxx.

xxx xxx xxx

When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the appeal is premature and the Court of Tax Appeals has no jurisdiction:

> Since in the instant case the taxpayer appealed the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction

[49] 103 Phil. 3 (1968) [Per J. Bengzon, *En Banc*].

> to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Citation omitted)
>
> **Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue.** Respondent's April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. **There was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the Court of Tax Appeals had no jurisdiction over the Petition for Review assailing the July 13, 2015 letter.**" *(Emphases and underscoring added)*

It is clear that Section 228 of the NIRC of 1997, as amended, requires that administrative protests against assessments conform with RR No. 12-99, as amended by RR No. 18-2013; failing which, there is no administrative protest to speak of, and no decision on a disputed assessment to assail. As such, when a petition for review is filed before this Court, without validly contesting the assessment, the appeal is premature, and the Court has no jurisdiction.

Thus, an assessment, embodied in an FLD/FAN, is considered "disputed" after a protest is filed against it, either by way of request for reconsideration or reinvestigation, within 30 days from date of receipt thereof. Moreover, the said administrative protest, if any, as contemplated under the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013, must be directed against the same FLD/FAN. Further, it is also clear that the same protest must state the nature thereof (whether it is a request for reconsideration or a request for reinvestigation), specifying the newly discovered or additional evidence the concerned taxpayer intends to submit, as well as the date of the FLD/FAN, and the applicable law, rules and regulations, or jurisprudence on which the protest is based; otherwise, the said protest shall be considered as void, and without force and effect.

While respondent claims that the assailed assessment has attained finality due to petitioner's failure to file an administrative protest to the FLD, it is noteworthy that petitioner denies having ever received any FLD. If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[50]

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[50] *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.

Relevantly, Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, reads, in part, as follows:

> 3.1.6 ***Modes of Service.*** – **The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**
>
> xxx xxx xxx
>
> (iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.** *(Emphases supplied)*
>
> xxx xxx xxx.

Based on the foregoing provisions, one of the modes of service of the FLD is by service through registered mail. As for such mode of service, the same must be made by sending the said notices *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the "[t]*he server shall accomplish the bottom portion of the notice"* and *"shall also make a written report under oath before a Notary Public or any person authorized to administer oath*[s] *under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information."*

As a corollary, in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[51] the Supreme Court ruled as follows:

[51] G.R. No. 202695, February 29, 2016.

> If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, <u>in fact</u>, received by the addressee.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card <u>which would have been signed by the taxpayer or its authorized representative</u>**. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, <u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>**. Mere notations made without the taxpayer's intervention, notice of control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices. *(Emphasis and underscoring added)*

Based on the foregoing, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was *actually* received by the addressee.

In addition, to prove the fact of mailing, respondent must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would have been signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing.

In this case, petitioner directly denies receipt of the FLD, hence, the burden of proving the *actual* receipt of the same lies with respondent.

To prove that the FLD with the assessment notices were served on petitioner through registered mail, respondent offered the following exhibits,[52] to wit:

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[52] *Respondent's Formal Offer of Evidence*, Docket, pp. 226 to 227.

Exhibit No.	Description	Purpose
"R-7"[53]	Formal Letter of Demand dated July 11, 2016	To prove the factual and legal bases of the deficiency tax assessment issued against petitioner for taxable year 2014
"R-7-a"[54]	Details of Discrepancies	To prove that petitioner is liable to pay the assessed deficiency income and value-added taxes for taxable year 2014 in the aggregate amount of ₱11,659,492.30, plus interests and surcharges.
"R-8"[55]	Assessment Notice with Assessment No. IT-eLA57073-14-02516	To prove the factual and legal bases of the deficiency tax assessment issued against petitioner for taxable year 2014
"R-8-A"[56]	Assessment Notice with Assessment No. VT-eLA57073-14-02516	To prove that petitioner is liable to pay the assessed deficiency income and value-added taxes for taxable year 2014 in the aggregate amount of ₱11,659,492.30, plus interests and surcharges.
"R-9"[57]	Registry Return Receipt with No. RD 513 598 572 ZZ	To prove that the Final Letter of Demand /Final Assessment Notice was properly served. To prove that petitioner was informed of the factual and legal bases of the deficiency tax assessments issued against petitioner for taxable year 2014

Relative to the foregoing documents, RO Lemuel C. Duadua testified in his Judicial Affidavit, as follows:

> "33. Q: You mentioned that the FLD with attached Details of Discrepancies and Audit Results/Assessment Notices were served to petitioner. Do you have any proof that it was served to and received by petitioner?
>
> A: Yes. There is a Registry Return Receipt with No. RD 513 598 572 ZZ showing that **the FLD/FAN was received by the same person who received the PAN, Ms. Zenaida Lao, and it was received on July 15, 2016**.
>
> 34. Q: You mentioned of a Registry Return Receipt with No. RD 513 598 572 ZZ. If this document will be shown to you, will you be able to identify the same?

53 BIR Records (Exhibit "R-16"), pp. 154 to 155.
54 BIR Records (Exhibit "R-16"), p. 151.
55 BIR Records (Exhibit "R-16"), p. 153.
56 BIR Records (Exhibit "R-16"), p. 152.
57 BIR Records (Exhibit "R-16"), p. 159.

A: Yes.

35. Q: I am now showing you this copy of Registry Return Receipt with No. RD 513 598 572 ZZ found on page 157 of the BIR Records and marked as **Exhibit "R-9"** for the respondent. What is the relation of this document to the document that you mentioned?

A: This is the Registry Return Receipt that I was referring to."[58] *(Emphasis added)*

This was confirmed by petitioner herself on cross-examination and clarificatory inquiry from the Court:

Atty. Dela Cruz:

Good morning, Ms. Witness, you mentioned earlier in your Judicial Affidavit that an LOA has been issued, how did you receive this LOA?

Witness:

Through letter. Sent to ours, attorney.

Q:

So, it was received personally?

A:

No, attorney.

Q:

Who received it?

A:

My staff.

Q:

What is the name of your staff?

A:

Zenaida Lao.

[58] *Judicial Affidavit of Revenue Officer Lemuel C. Duadua*, Docket, pp. 124 to 125.

Q:

You also mentioned that a Preliminary Assessment Notice has been issued to you, did you receive this PAN?

A:

I cannot remember exactly matagal na kase 2016 ba yun.

Atty. Dela Cruz:

I am referring to the document that you have identified in your Judicial Affidavit, Ms. Witness, it is your Exhibit P-8, how did you receive this PAN?

Witness:

Hindi ko na matandaan.

JUSTICE SAN PEDRO:

Hindi nyo po matandaan pero na-received po ninyo?

A:

Hindi ko po, pero matagal na.

JUSTICE SAN PEDRO:

Pero sa Judicial Affidavit nyo sinabi nyo na natanggap nyo itong Preliminary Assessment Notice?

A:

Natangap siguro, hindi ko kase…

Atty. Dela Cruz:

How come you were able to file a reply to the PAN considering that you have filed a reply to the PAN, you received the Preliminary Assessment Notice, correct?

A:

Yes, ma'am.

Q:

How about the Final Decision on Disputed Assessment which you mentioned that you received, how did you receive this FDDA?

Witness:

Sent to our store also.

Atty. Dela Cruz:

Do you know how did you receive it? is it through personal service or registered mail

A:

Registered mail.

Q:

Who received it?

A:

Our staff also.

Q:

Same staff as you mentioned earlier Zenaida Lao?

A:

Yes.

xxx xxx xxx

JUSTICE SAN PEDRO:

Ok. Do you know the alleged representative who signed the receipt of the FLD sent via registered mail on July 2016?

A:

My staff, Your Honor.

JUSTICE SAN PEDRO:

You listen well because **you said you did not receive the FLD, the Final Letter of Demand which was filed via registered mail on July 15, 2016 because at that time, your office had already closed? But still the registry receipt was signed by someone? Do you know who signed that?**

Witness:

My staff, Your Honor.

JUSTICE SAN PEDRO:

You are sure?

Witness:

Yes, Your Honor.

xxx xxx xxx

JUSTICE SAN PEDRO:

Sinasabi ng BIR yung Final Letter of Demand pinadala sa opisina mo at tinanggap July 15, 2016, nagsara kayo 2015 after more than a year may pinadala sa office nyo may tumanggap?

A:

Doon nila ipinadala sa bagong ano na main office.

JUSTICE SAN PEDRO:

Ah sa bagong office na, **so natanggap nyo talaga ito?**

A:

Yes, Your Honor.

JUSTICE SAN PEDRO:

Alright. Any clarificatory questions emanating from the court? Petitioner?

Atty. Dayrit:

So, **Ms. Witness, you received the Final Letter of Demand from the BIR?**

A:

Yes, attorney, my staff.

Atty. Dayrit:

No further questions, Your Honor." [59] (Emphases added)

Hence, respondent was able to establish that there was actual service and receipt of the subject FLD. The Court is convinced that the FLD was properly served upon petitioner, through Ms. Zenaida Lao, her staff. Notably, petitioner herself stated in her letter to the BIR dated February 24, 2018,[60] that Ms. Zenaida Lao is her authorized representative.

Verily, for failure of petitioner to timely protest the FLD received on July 15, 2016 in accordance with the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013, the same cannot be considered as a disputed assessment. Since there is no disputed assessment, nothing can be acted or decided upon by respondent or his duly authorized representative. There being no disputed assessment and no decision by

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[59] Transcript of Stenographic Notes (TSN) dated September 1, 2022, pp. 7 to 9; 12 to 15.
[60] Exhibit "R-14", BIR Records (Exhibit "R-16"), p. 221.

respondent to speak of in this case, nothing can be brought before the Court for review.

This Court can no longer resolve the issue on the alleged nullity of the subject assessments, as it does not possess the authority to adjudicate the controversy, due to petitioner's failure to comply with the 30 day period to appeal. In other words, petitioner's failure to file her *Petition for Review* with this Court within the statutory period renders the disputed assessments final, executory and demandable, thereby precluding her from questioning the validity or the correctness of the same[61] or from invoking any defense that would reopen the question of his tax liability on the merits.[62]

As there was no disputed assessment to speak of, respondent's FDDA dated April 18, 2018,[63] cannot be treated as his decision on a *disputed* assessment. Consequently, this Court has no jurisdiction to entertain the present *Petition for Review*, which assails the *Decision* dated May 19, 2021[64] affirming the FDDA.[65]

As held by the Supreme Court in *Brual vs. Brual, et al.*:[66]

> **The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.** In *Boardwalk Business Ventures, Inc. v. Villareal*, this Court had the occasion to elucidate the parameters of the right to appeal, thus:
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>> To stress, **the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory**. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party have the correlative right to enjoy the finality of a decision in his favor. [Emphasis Ours] *(Emphases added)*

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61 *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006.
62 *FELS Energy, Inc. vs. The Province of Batangas, et al.*, G.R. Nos. 168557 & 170628, February 16, 2007.
63 Par. 5, Joint Stipulation of Facts, JSFI, Docket, p. 154; Exhibit "P-4", Docket, pp. 182 to 184; Exhibit "R-12", BIR Records (Exhibit "R-16"), pp. 214 to 216.
64 Par. 6, Joint Stipulation of Facts, JSFI, Docket, p. 154.
65 Exhibit "P-1", Docket, pp. 28 to 32; Exhibit "R-15", BIR Records (Exhibit "R-16"), pp. 279 to 283.
66 G.R. No. 205451, March 7, 2022.

Thus, courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[67] To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[68] It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[69] Relative thereto, when it appears from the pleadings or the evidence on record that the Court has no jurisdiction over the subject matter, the Court shall dismiss the claim. The Court could not decide the case on the merits.[70]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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67 *Ace Publication, Inc. vs. The Commissioner of Customs, et al.*, G.R. No. L-18808, May 29, 1964.

68 *AT&T Communications Services Phils., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014, citing *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.

69 *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

70 *Nippon Express (Phils.) Corp. v. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

On Leave
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice