REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

XAVIER UNIVERSITY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8200

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:

DEC 08 2015 11:15 a.m.

x -- x

DECISION

BAUTISTA, J:

The Case

This is a Petition for Review[1] filed on December 16, 2010, pursuant to *Section 7(a)(1)*[2] of *Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], seeks for the Court to cancel Assessment No. RR 16-098-594-09 for being filed without legal and factual basis, and to permanently enjoin respondent from

---

[1] *Records, CTA Case No. 8200*, pp. 1-99, with annexes.

[2] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals 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.

[3] *An Act Creating the Court of Tax Appeals, as amended.*

[4] *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.*

[5] *An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.*

assessing Income Tax and Value-added Taxes ("VAT") on the lease income of petitioner.[6]

The Parties

Petitioner is a non-stock non-profit educational institution organized in accordance with the laws of the Republic of the Philippines.[7]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), holding office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[8]

The Facts

On December 14, 2007, petitioner received Letter of Authority ("LOA") No. LOA 2001 00056649 dated November 29, 2007 issued by Regional Director[9] Mustapha M. Gandarosa.[10]

On March 12, 2008, petitioner received a Second Notice for production of documents dated March 12, 2008, from Revenue District Officer Ester S. Palala.[11]

On October 29, 2008, petitioner received a Notice of Informal Conference ("NIC") dated October 14, 2008 from the same Revenue District Officer Ester S. Palala with an assessed amount of Php4,483,168.27.[12]

On December 16, 2008, petitioner filed its reply to the NIC claiming that it is not liable to pay the assessment due to its constitutional tax exemption.[13]

---

[6] *Records,* p. 12.
[7] *Id., Joint Stipulation of Facts and Issues ("JSFI"),* p. 265.
[8] *Id.,* p. 140.
[9] *Id., Exhibit* "B," p. 160.
[10] *Id., JSFI,* p. 265.
[11] *Id., JSFI,* p. 266.
[12] *Id.*
[13] *Id.*

On July 14, 2009, Petitioner received a Preliminary Assessment Notice ("PAN") dated June 25, 2009 from Assistant Regional Director Mamapok G. Diro, with a revised assessment of Php1,360,906.17.[14]

On July 29, 2009, petitioner filed its reply to the PAN, reiterating its argument of exemption.[15]

On October 2, 2009, petitioner received a Formal Letter of Demand ("FLD") dated August 12, 2009 from Regional Director Esmeralda M. Tabule,[16] containing a final tax assessment in the amount of Php1,364,944.23 for fiscal year June 1, 2006 to May 31, 2007.[17]

On October 30, 2009, petitioner filed a Letter of Protest with Request for Reinvestigation with respondent CIR.[18]

On March 10, 2010, petitioner executed a Waiver of the Statute of Limitations under the 1997 National Internal Revenue Code ("NIRC").[19]

On May 21, 2010, petitioner received a Letter from Revenue District Officer[20] Ester S. Palala dated May 20, 2010, demanding the settlement of the assessed taxes.[21]

On November 22, 2010, petitioner received a copy of a Memorandum dated October 15, 2010 from the Legal Division of Revenue Region No. 16 regarding the opinion of the OIC Chief Legal Division Habari L. Balt, that the assessment is already final and executory.[22]

On December 22, 2010, petitioner filed the instant Petition for Review.[23]

---

[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id., JSFI,* p. 265.
[18] *Id., JSFI,* p. 266.
[19] *Id.*
[20] *Id., Exhibit* "K," p. 189.
[21] *Id., JSFI,* p. 267.
[22] *Id.*
[23] *Id.*

Respondent and petitioner filed their Pre-trial Briefs on August 23, 2011[24] and September 23, 2011[25], respectively.

On November 4, 2011, the parties filed their Joint Stipulation of Facts ("JSFI")[26] by registered mail, thus, a Pre-Trial Order[27] was issued on December 2, 2011.

On September 4, 2012, petitioner filed by registered mail its Formal Offer of Exhibits[28], which was resolved by the Court in its Resolution dated October 11, 2012.[29]

On July 27, 2013, respondent filed her Formal Offer of Evidence[30], which was resolved by the Court in its September 24, 2013[31] and September 18, 2014[32] Resolutions.

In compliance to the September 18, 2014 Resolution[33] of the Court granting the parties a period of thirty (30) days from receipt thereof to file their respective memoranda, respondent and petitioner then filed their Memoranda on November 24, 2014[34] and December 15, 2014[35], respectively.

Thus on January 14, 2015, the Court promulgated a Resolution[36] submitting the case for decision, hence, this Decision.

The Issues[37]

---

[24] *Id.*, pp. 140-147.
[25] *Id.*, pp. 152-158, with annexes; filed by registered mail.
[26] *Id.*, *JSFI*, pp. 265-267.
[27] *Id.*, pp. 281-288.
[28] *Id.*, pp. 335-340.
[29] *Id.*, pp. 363-365; *Exhibits* "B," "C," "D," "E" to "E-7," "F" to "F-2," "G" to "G-1," "H" to "H-5," "I" to "I-5," "J," "K," "L" to "L-3," "M," "M-1," "M-2" to "M-6," "M-7," "M-8" to "M-17," "Q," "R," and "S" were admitted; while *Exhibits* "A," "D-1," "D-2," "N," "N-1," "N-2" to "N-3," "N-4," "N-5," "N-6," "N-7," "N-8" to "N-26," "O," and "P" were denied.
[30] *Id.*, pp. 435-445, with annexes.
[31] *Id.*, pp. 463-464; *Exhibits* "1," "3," "4," "9," "10," "10-A," "10-B," and "10-C" were admitted; while *Exhibits* "2," "7," "8," "16," "16-A," "16-B," "17," "17-A," "17-B," "18," "18-A," "18-B," "19," "20," "20-A," "21," "21-A," "22," "22-A," "23," and "23-A" were denied.
[32] Id., pp. 527-528, *Exhibits* "2," "7," "8," "16," "16-A," "16-B," "17," "17-A," "17-B," "18," "18-A," "18-B," "19," "20," "20-A," "21," "21-A," "22," "22-A," "23," and "23-A" were finally admitted.
[33] *Id.*
[34] *Id.*, pp. 550-562; filed by registered mail.
[35] *Id.*, pp. 568-577; filed by registered mail.
[36] *Id.*, p. 580.
[37] *Id.*, p. 283.

The issues for consideration of the Court are as follows:

1. WHETHER OR NOT THE PETITION WAS FILED ON TIME; AND

2. WHETHER OR NOT PETITIONER IS EXEMPT FROM PAYMENT OF THE ASSESSED TAXES AS A NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION USING ITS RESOURCES ACTUALLY, DIRECTLY AND EXCLUSIVELY FOR EDUCATIONAL PURPOSES.

Petitioner's Arguments[38]

Petitioner avers that it is not liable for Income Tax and VAT on its rental income under *Section 4(3) of Article XIV of the 1987 Philippine Constitution*; that this issue was passed upon by this Court in the case of *Ateneo de Manila University (Quezon City), Inc. v. Commissioner of Internal Revenue, CTA Case No. 7293, March 11, 2010 ("Ateneo")*, wherein this Court ruled that the concessionaires' fees of the school from the operation of its cafeterias are exempt from both taxes; and that in ruling in that manner, this Court was guided by the Supreme Court ("SC") case of *Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 124043, October 14, 1998*, which upheld the exemption of Ateneo de Manila and declared that the educational institution must only prove that it is a non-stock non-profit educational institution and that the income it seeks to be exempt must be used actually, directly and exclusively for educational purposes.

Petitioner further cites the case of *La Sallian Educational Innovators-Foundation (De La Salle University College of Saint Benilde), Inc. v. Commissioner of Internal Revenue, CTA Case No. 7476, July 16, 2010*, which was consistent with the ruling in the *Ateneo case* and cited the same SC case in granting Income Tax and VAT exemption to La Salle on its income from ICC, auxiliary services, concessionaire, photocopy, bookstore, parking, boarding house and locker rental.

Moreover, petitioner claims that the fact that it is a non-stock non-profit educational institution is no longer an issue since this was already included in the parties' JSFI, hence, the only issue to be

---

[38] *Id.*, pp. 568-577.

resolved is whether its lease or rental income was actually, directly and exclusively used for educational purposes, which was discharged by petitioner by preponderance of evidence through its witnesses' testimony.

Respondent's Counter-Arguments[39]

Respondent counters that the Court did not acquire jurisdiction over the case since petitioner failed to file the judicial claim within the period prescribed under *Section 228 of the 1997 NIRC;* that petitioner received the FLD on October 2, 2009, to which it filed a Letter of Protest with Request for Reinvestigation on October 30, 2009; that petitioner then received a letter on May 21, 2010 dated May 20, 2010 demanding settlement of the assessed taxes, giving it thirty (30) days therefrom or until June 20, 2010 to file its Petition for Review with this Court; that the said letter clearly stated that it is in response to petitioner's request for reinvestigation on the deficiency taxes for fiscal year ended May 31, 2007, with a demand to pay the tax liabilities stated therein; that the said letter is clearly a denial of the protest letter; that, instead, petitioner filed the present Petition for Review on December 22, 2010; and that pursuant to *Paragraph 6, Section 3.1.5 of Revenue Regulations ("RR") No. 12-99,* the assessment has become final, executory and demandable.

To bolster its argument, respondent cited the case of *Commissioner of Internal Revenue v. Ayala Securities Corporation, G.R. No. L-29485, March 31, 1976,* which ruled that the letter in that case, which not only demanded payment but also gave a warning that in case of failure to pay, the CIR shall enforce collection through legal remedies, constitutes a denial of the request for reconsideration of Ayala Securities since it is a reiteration of the demand made by the BIR and amounted to a decision on a disputed or protested assessment.

Respondent claims that by plain reading of the letter, petitioner should have been able to determine its right to appeal, finding support in the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, G.R. No. 148380, December 9, 2005.* Respondent counters petitioner's allegation, that the period to appeal must be reckoned from receipt of the Memorandum dated October 15, 2010,

---

[39] *Id.*, pp. 550-562.

by stating that the same is a mere internal communication within the BIR and is not meant to partake the nature of a final decision.

Lastly, respondent emphasizes that the right to appeal is not a natural right and the periods provided under the law must be strictly complied with; that the thirty (30)-day period is jurisdictional; that petitioner's exemption from tax is not absolute; and that all presumptions are in favor of the correctness of tax assessments.

The Ruling of the Court

The Court finds that the period to appeal to the CTA has prescribed.

The pertinent provision is *Section 228 of the 1997 NIRC,* as reproduced hereunder:

> 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.
>
> 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.
>
> <u>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</u>

decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. [emphasis ours]

Moreover, *Section 3 of RR No. 12-99*[40], provides the following:

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

3.1 Mode of procedures in the issuance of a deficiency tax assessment: xxx

xxx xxx xxx

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,

---

[40] *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*, September 6, 1999.

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.

3.1.6 *Administrative Decision on a Disputed Assessment.* — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.

Based on the foregoing, the taxpayer has thirty (30) days from receipt of the Final Assessment Notice ("FAN") and the FLD within which to file its protest. If the taxpayer's protest is denied, appeal can be made to the CTA within thirty (30) days from receipt of the decision. Should the Commissioner fail to rule upon the taxpayer's protest within one hundred and eighty (180) days, the taxpayer may likewise appeal to the CTA within thirty (30) days. Should the taxpayer fail to file an appeal within the thirty (30)-day period, the assessment shall become final and executory.

It must be noted that petitioner failed to provide its arguments regarding respondent's claim of prescription.[41] However, it considered the Memorandum[42] received on November 22, 2010 as a denial by respondent of its request for reconsideration or reinvestigation and counted the thirty (30)-day prescriptive period to appeal the final decision of respondent therefrom.[43]

The FLD[44] dated August 12, 2009, signed by Regional Director Esmeralda M. Tabule, CESO VI, and received by petitioner on October 2, 2009 through its University Treasurer Lennie K. Ong, provides the following assessment:

KIND OF TAX	BASIC	SURCHARGE	INTEREST	COMPROMISE PENALTY	TOTAL
Income Tax	484,355.01	121,088.75	226,033.95	20,000.00	**851,477.71**
Value-added Tax		50,385.86	86,775.74	16,000.00	**153,161.60**
Fringe Benefit Tax		125,009.89	215,295.03	20,000.00	**360,304.92**
Total Amount still due	**484,355.01**	**296,484.50**	**528,104.72**	**56,000.00**	**1,364,944.23**

This was accompanied with a request to pay the said taxes, a breakdown of the assessments, and the details of the discrepancies

---

[41] *Records*, pp. 568-577.
[42] *Id., Exhibits* "L," "L-1," "L-2," and "L-3," pp. 190-193; emphases supplied.
[43] *Id.*, p. 569; "On November 22, 2010, [p]etitioner received a denial letter from respondent reiterating that its assessment was valid and demandable, hence the [present] Petition by [petitioner]."
[44] *Id., Exhibits* "H," "H-1," and "H-2," pp. 176-178.

found. Attached to the FLD were the FANs[45], which provided the due date for payment of the alleged deficiency taxes.

Having received the FANs and FLD on October 2, 2009, petitioner has until November 1, 2009 to file a protest thereto.

On October 30, 2009 and within the period provided, petitioner filed its Letter of Protest with Request for Reinvestigation[46] dated October 30, 2009, signed by University Treasurer Lennie K. Ong, requesting for a reconsideration and a reinvestigation of the FLD and the FANs.

Having filed a protest, petitioner now has two options: *(1)* to file a petition for review with the CTA within thirty (30) days after the expiration of the one hundred and eighty (180)-day period, if no action is made by the CIR; or *(2)* to await the final decision of the CIR on the disputed assessment and, in case of denial, appeal the same to the CTA within thirty (30) days from receipt thereof.[47] It must be emphasized that these options are mutually exclusive and resort to one bars the application of the other.[48]

The next thing petitioner received was the controversial Letter[49] dated May 20, 2010, signed by Revenue District Officer Ester S. Palala, and received by petitioner on May 21, 2010 through a certain Jaysan Ray N. Chee, which reads as follows:

> Republic of the Philippines
> Department of Finance
> **BUREAU OF INTERNAL REVENUE**
> Revenue District Office No. 98
> Cagayan de Oro City
>
> May 20, 2010
>
> MS. LENNIE K. ONG
> Treasurer, Xavier University
> Corrales Avenue, Cagayan de Oro City
>
> Dear Ms. Ong:
>
> This is in reference to your request for reinvestigation on the deficiency Income Tax of [Php]851,477.71, penalties on [VAT] of [Php]153,161.60 and

[45] *Id., Exhibits* "H-3," "H-4," and "H-5," pp. 179-182.
[46] *Id., Exhibits* "I," and "I-1" to "I-5," pp. 182-187.
[47] *Lascona Land, Co., Inc. v. Commissioner of Internal Revenue,* G.R. No. 171251, March 5, 2012.
[48] *Id.*
[49] *Records, Exhibit* "K," p. 189.

penalties on Fringe Benefit Tax [("FBT")] of [Php]360,304.92 per BIR Form No. 0401 Audit Results/Assessment Notice No. RR16-098-594-09 issued August 12, 2009 issued [*sic*] to Xavier University covering taxable fiscal year ended May 31, 2007.

Please be informed that your issues raised were already addressed last September 14, 2009 by Regional Director Esmeralda M. Tabule, CESO VI, Revenue Region No. 16, Cagayan de Oro City. Furthermore, we would like to inform you that we are forwarding the case to Revenue Region No. 16, Cagayan de Oro City for its perusal.

We humbly advise you to settle the abovementioned unpaid deficiency income tax and penalties.

Very truly yours,

(signature)
ESTER S. PALALA
Revenue District Officer

At this point, it must be noted that petitioner filed its protest on October 30, 2009, should respondent fail to act thereon within one hundred and eighty (180) days or until April 28, 2010, petitioner has thirty (30) days therefrom or until May 28, 2010 to file an appeal with the CTA. Considering that no appeal has yet been made, it is evident that petitioner has chosen to await the decision of the respondent.

On November 22, 2010, petitioner received a Memorandum[50] dated October 15, 2010, which is reproduced in full below:

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 16
Cagayan de Oro City

MEMORANDUM

FOR	:	**MS. ESMERALDA M. TABULE, CESO VI** Regional Director This Revenue Region
SUBJECT	:	**XAVIER UNIVERSITY'S RESPONSE TO PRELIMINARY COLLECTION NOTICE**
DATE	:	October 15, 2010

This pertains to the case of **Xavier University** [("XU")] which was investigated of all its internal revenue tax liabilities for the period **ending May 31, 2007.**

[50] *Id., Exhibits* "L," "L-1," "L-2," and "L-3," pp. 190-193; emphases supplied.

The facts of this case revealed that the abovementioned taxpayer was investigated of all its internal revenue tax liabilities by RO Mariceline C. Daba pursuant to [LOA] No. 00056649 dated November 29, 2007 for the period FY June 01, 2006 to May 31, 2007.

Verification made on the records of the subject taxpayer revealed the following:

- out of its gross receipts, [Php]1,679,528.72 is lease income from its commercial spaces with related expenses of [Php]295,657.25 resulting to a taxable net income of [Php]1,383,871.41 without payment of [Income Tax and VAT];

- XU failed to withhold and remit from scholarship grants given to rank and file employees in the total amount of [Php]1,062,584.07; and

- The Jesuit Fathers'services were not treated as salaries since they are not recipients of the consideration being priests with vow of poverty but by congregation. They agree to pay the 30% donor's tax instead, which is higher than the withholding tax on compensation.

Based on the foregoing, XU was assessed of the following taxes:

Kind of Tax	Basic Tax	Increments/Penalties	Total Assessments
[FBT]	P 500,039.56	P 278,353.77	P 778,393.34
[VAT]	202,543.45	117,880.21	319,423.66
Income Tax	484,355.01	282,358.97	766,713.98
Donor's Tax	1,915,701.01		1,915,701.01
Total	**P 3,101,639.03**	**P 678,592.95**	**P 3,780,231.99**

These findings and resulting deficiency taxes led to a series of informal conferences and on March 20, 2009 the taxpayer eventually paid the donor's tax and the basic taxes of [FBT] and [VAT] in the total amount of **[Php]2,617,284.02**, broken down as follows:

Kind of Tax	Paid
[FBT]	P 500,039.56
[VAT]	201,543.45
Donor's Tax	1,915,701.01
Total	P 2,617,284.02

The Revenue Officer [("RO Daba")] subsequently recommended forwarding the case to the Assessment Division for the issuance of the [PAN] for the deficiency income tax plus penalties and uncollected increments of [FBT] and [VAT].

The [PAN] dated June 25, 2009 was issued and was received by the taxpayer on July 14, 2009. Thereafter, the taxpayer in a letter dated July 29, 2009 received by this Office on July 31, 2009, presented its side of the case and laid down its arguments, to wit:

a. non-revalidation of [LOA] No. OOO56649 and audit was done beyond the 120-day period;

b. tax exemption of non-stock/non-profit educational institutions is granted by the Constitution and not by law, not by Section 30 of the [1997 NIRC], revenue regulations, circulars or rulings, hence rental income is tax exempt; and

c. non-payment of surcharge and interest for its [FBT] and [VAT] liabilities since payment period has not yet expired.

These issues raised by the taxpayer were thoroughly answered by this Office in a letter dated September 14, 2009 duly signed by the Regional Director. Since the taxpayers contentions and arguments were not acceptable and were denied, this Office proceeded with the issuance of the [FAN] and [FLD], both dated August 12, 2009 asking the taxpayer to pay its deficiency taxes in the total amount of **[Php]1,364,944.23** representing deficiency income tax with increments plus the penalties on both VAT and FBT. These were eventually received by the taxpayer on October 2, 2009 and on October 30, 2009[.] [T]he taxpayer filed its ***Letter of Protest with Request for Reinvestigation*** together with the signed Waiver of Statute of Limitations which was received by this Office on even date. **The protest letter of the taxpayer basically raised the same issues and arguments it had previously raised when it protested the PAN.**

The request for reinvestigation was given due course inasmuch as it was filed within the prescribed period. Hence, the docket of the case was returned to the District Office of origin and was assigned to RO Alexander G. Fuentes pursuant to TVN No. 00269830 dated April 08, 2010.

In the reinvestigation report dated May 20, 2010, RO Fuentes **affirmed and maintained the previous stand of this Office contained in a letter dated September 14, 2009 duly signed by the Regional Director and recommended for the collection of the deficiency income tax inclusive of increments and penalties on VAT and FBT.** Said findings were also transmitted in a letter of the same date, May 20, 2010, to taxpayer through Ms. Lennie K. Ong, its Treasurer, **advising [] the immediate settlement of the abovestated tax liabilities which** was received vy the taxpayer on **May 21, 2010.**

From then on, ***none was ever heard from the taxpayer*** so this ***Office proceeded with the issuance of the Preliminary Collection Notice dated August 4, 2010.*** However, this was consequently replied [to] by the taxpayer in a letter dated September 1, 2010 duly received on September 03, 2010 citing the recent decisions of the Court of Tax Appeals which are more or less similar to the taxpayer's case.

Hence, this referral to the Legal Division for comments/recommendations.

As can be gleaned from the facts of this case, it is clear that this Office has already denied the administrative protest of the taxpayer.

The forms of denial of an administrative protest can either be **direct or indirect**. It is **direct** when there is a formal decision of denial by the BIR Commissioner or his duly authorized representative stating therein that it is his final decision (*Union Shipping Corporation vs. CIR*).

It is **indirect** when there is a filing of civil case in the Regional Trial Court [("RTC")] without ruling first on the valid protest timely filed by the taxpayer (*Yabes vs. Flojo, G.R No. L-46954, July 20, 1982*); issuance of WDL or Final Notice Before Seizure (*CIR vs. Isabela Cultural Corporation, 361 SCRA 71*); referral of case to Solicitor (*General Republic vs. Lim Tian Teng & Sons, GR No. L-21731, March 31, 1966*); and a **LETTER REITERATING DEMAND FOR IMMEDIATE PAYMENT OF THE TAX** (*CIR vs. Ayala Securities Corporation, GR No. L-29485, March 31, 1976*).

It must be noted that in the reinvestigation of the taxpayer's case, the Revenue Officer assigned manifested his affirmation by maintaining the previous stand of this Office contained in a letter dated September 14, 2009 duly signed by the Regional Director and recommended the collection of the deficiency income tax plus increments as well as the penalties for [VAT] and [FBT].

A perusal of the letter dated May 20, 2010, which was duly received by the taxpayer on May 21, 2010, clearly shows that the same is ***BIRs final decision***

> ***on the matter.*** It follows that upon receipt of the taxpayer [of] the said letter on May 21, 2010[,] it has thirty (30) days or until June 20, 2010 to appeal the denial of its protest to the Court of Tax Appeals pursuant to Section 228 of the [1997 NIRC], as amended. (***Fishwealth Canning Corporation vs. CIR, G.R. No. 179343 dated January 21, 2010.***)
>
> The Supreme Court emphasized that ***"the requirement to file a petition for review of appeal with the Court of Tax Appeals within 30 days is jurisdictional and failure to comply therewith would bar the appeal and deprive the said Court of its jurisdiction to entertain and determine the correctness of the assessment."*** The 30-day period provided by law where taxpayers can appeal the denial of their administrative protest to the Court of Tax Appeals is **mandatory in nature and it is beyond the power of the courts to extend.**
>
> Applying it to this particular case, Xavier University already **lost its right to appeal** when it failed to file a petition for review/appeal of its case to the Court of Tax Appeals upon the lapse[] of the 30-day period after its protest has been denied by this Office. Henceforth, the BIR assessment has already become **final, executory** and **demandable** after **June 20, 2010**. The collection of the aforestated tax liabilities is therefore valid.
>
> **PREMISES CONSIDERED**, it is hereby recommended that the entire docket of this case be returned to the District Office for further appropriate action.
>
> (signature)
> **HABARI L. BALT**
> OIC-Chief, Legal Division
>
> Copy furnished:
>
> **MS. ESTER S. PALALA**
> Revenue District Officer
> Revenue District Office No. 98
> Cagayan de Oro City
>
> **MR. EDUARDO CABANES**
> Chief, Collection Section
> RDO No. 98, Cagayan de Oro City
>
> **MS. LENNIE K. ONG**
> Treasurer, Xavier University
> Xavier University Campus, Cagayan de Oro City

As provided in *Section 3.1.6 of RR No. 12-99*, the final decision of the CIR or his/her authorized representative shall state the factual and legal bases of the decision, otherwise, the decision shall be void and it shall not be deemed a decision on the disputed assessment. Likewise, it should state that it is a final decision.

However, respondent avers that the May 20, 2010 Letter is in a form of an indirect denial of petitioner's protest, which need not strictly adhere to the above-stated form, citing the cases of *Commissioner of Internal Revenue v. Ayala Securities*[51], *Surigao Electric*

---

[51] G.R. No. L-29485, March 31, 1976, 70 SCRA 204.

Co., Inc. v. Court of Tax Appeals[52], *Oceanic Wireless Network v. Commissioner of Internal Revenue*[53], and *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[54].

Commissioner of Internal Revenue v. Ayala Securities (G.R. No. L-29485, March 31, 1976, 70 SCRA 204) also involved a letter which reiterated the CIR's demand for the settlement of the assessment already made and for the immediate payment of the amount involved. In ruling that the letter amounts to a decision on a disputed or protested assessment, the SC stated that the letter is a clear indication of the firm stand of respondent against the reconsideration of the disputed assessment.

Also, the SC ruled in *Oceanic Wireless Network v. Commissioner of Internal Revenue (G.R. No. 148380, December 9, 2005, 477 SCRA 205)* that while the denial of the protest was in the form of a demand letter, the reference to the protest filed by Oceanic Wireless clearly shows the intention of the CIR to make it his final decision. This SC decision also cited the old case of *Ayala Securities*.

In the case at bar, the fact that the May 20, 2010 Letter states that it refers to petitioner's request for reconsideration or reinvestigation in relation to the FANs should have alerted petitioner that this is the final decision of respondent that it was waiting for. The said Letter even provided the total amount of taxes and penalties which are due from petitioner for the taxable year involved. It also included the "advise" to settle the tax liabilities, which should have been considered by petitioner as a red flag that its protest has been denied. Petitioner likewise admitted in the JSFI that the said letter demanded, not merely advised, the settlement of the assessed taxes.[55]

Taking everything in consideration, respondent is in effect saying that the letter is a response to petitioner's protest and that since petitioner did not raise any other argument that will merit the modification of the assessment, the assessment is upheld and payment shall be made. Respondent would not have demanded petitioner to pay the deficiency Income Tax and penalties if it is still considering the protest instead of acting negatively thereon.

---

[52] G.R. No. L-25289, June 28, 1974, 57 SCRA 523.
[53] G.R. No. 148380, December 9, 2005, 477 SCRA 205.
[54] G.R. No. 179343, January 21, 2010, 610 SCRA 524.
[55] *Records, JSFI*, p. 267.

Therefore, the May 20, 2010 Letter shall be deemed as respondent's final decision on the disputed FANs and FLD.

The above findings are bolstered by the subsequent issuance of the Memorandum. A careful reading thereof will show that it is not addressed to petitioner and is only an internal communication to guide the Regional Director in acting upon the assessment. Petitioner was merely given a copy thereof for its information or records.

Having received the final decision of respondent on May 21, 2010, petitioner had thirty (30) days therefrom or until June 21, 2010[56] to file its appeal to the CTA. Instead, petitioner filed the instant Petition for Review on December 22, 2010, one hundred and eighty four (184) days after due date. Clearly, the present petition was filed out of time and the assessment has attained finality.

The SC, in the case of *Boardwalk Business Venture, Inc. v. Villareal*[57] stressed that the right to appeal is statutory and anyone who wishes to avail the benefits thereof must comply with the law and the rules. The perfection of an appeal in the manner and within the period set by law is mandatory and jurisdictional.[58]

Consequently, the Court finds no reason to rule on the second issue.

WHEREFORE, in view of the foregoing, the Petition for Review filed by petitioner Xavier University is hereby **DENIED** due to lack of jurisdiction as it was filed beyond the prescriptive period, counting from the denial of the protest to the disputed assessment.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

---

[56] June 20, 2010 falls on a Sunday, hence, the next regular working day is June 21, 2010.
[57] G.R. No. 181182, April 10, 2013.
[58] *Id.*

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division's 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