REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

TEN-FOUR READYMIX CONCRETE, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10081

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
JUN 15 2020 · 11:02am

x - x

R E S O L U T I O N

This resolves petitioner's **Motion for Reconsideration** filed on February 6, 2019 through registered mail and received by this Court on February 12, 2020, praying that this Court's Resolution dated January 16, 2020 (assailed resolution) be reconsidered and set aside and that a new judgment be rendered instead. The dispositive portion of the assailed resolution reads as follow:

> "**WHEREFORE**, premises considered, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is hereby **GRANTED**. Accordingly, petitioner's *Petition for Review* is **DISMISSED** for lack of jurisdiction due to prescription.
>
> **SO ORDERED**."

Petitioner insists that this Court has jurisdiction over the subject matter of the case as it is timely filed within the thirty (30)-day period of appeal from the last action of respondent's representative, the Regional Director for Region 1, and that the matter elevated to this Court is not the assessment per se but the validity of the constructive service of the Final Decision on Disputed Assessment (FDDA) and the prescription of respondent's right to assess.

Petitioner faulted this Court in concluding that respondent's next action to its protest was the issuance of

Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) considering that respondent issued the FDDA although irregularly served.

Petitioner further faulted this Court in concluding that the issuance of PCL and FNBS is tantamount to a denial of the protest.

On the other hand, respondent in his Comment[1] argues that petitioner cannot rely on the claim that the action is based on "other matters" as it must be reckoned from the earliest communication that the latter received from the Bureau of Internal Revenue (BIR).

Respondent further argues that the issuance of PCL and FNBS finally disposed of petitioner's protest and that this Court did not disregard the issuance of an FDDA but the premise that petitioner did not receive said FDDA.

We deny the instant motion.

Petitioner argues that the counting of the 30-day period to elevate its case before this Court should be based on respondent's last action which should be considered as "other matters" mandated as within the jurisdiction of this Court.

It is true that under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, this Court may take cognizance on respondent's action that may constitute "other matters" as subject matter within the purview of said law.

However, there are other factors that may affect the jurisdiction of this Court which among them is the issue of prescription. The issue of prescription precludes any courts from taking cognizance of the case brought to it.

In *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*,[2] the Supreme Court ruled that when the Court has no jurisdiction, the case should be dismissed outright, to wit:

---

[1] Docket, CTA Case No. 10081, *Comment/Opposition* dated March 3, 2020.
[2] G.R. No. 185666, February 04, 2015.

> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
>
> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. 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.**" (*Emphasis supplied*)

In this case, it is very clear that petitioner's right to file an appeal before this Court had already prescribed, hence, dismissible.

Petitioner should be aware that the receipt by the taxpayer of any final demand letter of payment of delinquent or deficiency taxes, *i.e.* PCL or FNBS, is the FDDA or the final action of respondent in the disputed assessment.

In *Commissioner of Internal Revenue v. Isabela Cultural Corporation*[3], the Supreme Court ruled that the receipt of FNBS is a deemed denial of taxpayer's protest, to wit:

> Lastly, jurisprudence dictates that a final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. In *Commissioner of Internal Revenue v. Ayala Securities Corporation*, this Court held:
>
>> "The letter of February 18, 1963 (Exh. G), in the view of the Court, is tantamount to a denial of the reconsideration or [respondent corporation's] x x x protest o[f] the assessment made by the petitioner, considering that the said letter [was] in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of P758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of

[3] G.R. No. 135210, July 11, 2001.

> petitioner against the reconsideration of the *disputed assessment,* in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the assessment in question.
>
> This being so, the said letter amount[ed] to a decision on a disputed or protested assessment and, there, the court *a quo* did not err in taking cognizance of this case."

> Similarly, in *Surigao Electric Co., Inc. v. Court of Tax Appeals* and again in *CIR v. Union Shipping Corp.*, we ruled:
>
> > "x x x. The letter of demand dated April 29, 1963 unquestionably constitutes the final action taken by the commissioner on the petitioner's several requests for reconsideration and recomputation. In this letter the commissioner not only in effect demanded that the petitioner pay the amount of P11,533.53 but also gave warning that in the event it failed to pay, the said commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. The tenor of the letter, specifically the statement regarding the resort to legal remedies, unmistakably indicate[d] the final nature of the determination made by the commissioner of the petitioner's deficiency franchise tax liability."
>
> As in *CIR v. Union Shipping,* petitioner failed to rule on the Motion for Reconsideration filed by private respondent, but simply continued to demand payment of the latter's alleged tax delinquency. Thus, the Court reiterated the dictum that the BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes final action on a disputed assessment. The object of this policy is to avoid repeated requests for reconsideration by the taxpayer, thereby delaying the finality of the assessment and, consequently, the collection of the taxes due. Furthermore, the taxpayer would not be groping in the dark, speculating as to which communication or action of the BIR may be the decision appealable to the tax court.
>
> In the instant case, the second notice received by private respondent verily indicated its nature - that it was *final.* Unequivocably, therefore, it was tantamount to a rejection of the request for reconsideration.

Thus, we reiterate our ruling in the assailed resolution that the issuance of PCL and FNBS is tantamount to a denial of its protest, hence, the 30-day period to file an appeal before this Court runs from the time of petitioner's receipt of said notices, to wit:

> Petitioner should be aware that the issuance of said PCL and FNBS is tantamount to a denial of its protest. In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al.*, the Supreme Court ruled that when taxpayers receive a notice or a letter other than the Final Decision on Disputed Assessment (FDDA) demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest, to wit:
>
> > A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
> >
> > xxx xxx xxx
> >
> > The demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. As correctly held by the Court of Tax Appeals, "while the denial of the protest was in the form of a demand letter, the notation in the said letter making reference to the protest filed by petitioner clearly shows the intention of the respondent to make it as [his] final decision."
>
> The protest was deemed denied by the issuance of said PCL and FNBS. Hence, petitioner should have appealed before this Court within 30 days from December 21, 2018 or until January 20, 2019 by filing a PFR.
>
> However, petitioner only filed its PFR on May 20, 2019. Thus, prescription on the filing of said petition PFR has already set in, thereby depriving this Court of jurisdiction in hearing the instant case.

Granting that this Court recognizes petitioner's knowledge of said FDDA on January 21, 2019, petitioner was still late in the filing of said PFR on May 20, 2019 since it had only until February 20, 2019 to file said petition before this Court.

Further, a close scrutiny of Annex "B" of the Petition for Review (PFR) marked as petitioner's Exhibit "P-1"[4] shall reveal that the alleged protest letter dated May 18, 2018 is not a valid protest.[5] A perusal of said protest letter reveals that it did not indicate the date of receipt of the Formal Letter of Demand (FLD) or the Final Assessment Notice (FAN), it did not cite legal or jurisprudential basis, and it was a very general letter request for reinvestigation.

---

[4] Docket, p. 29.
[5] *Id.*, Petition for Review, pp. 12-13.

Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides for the elements of a valid protest, to wit:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN 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 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.* (Emphasis supplied)

The failure of the petitioner to indicate the date of the assessment notice, and the applicable law, rules and regulations, or jurisprudence on which its supposed protest was based had rendered such invalid. Hence, even before the issuance of the PCL and FNBS, the assessment became final and executory due to the absence of a valid legal protest. As such, the filing of the PFR is already prescribed.

Besides, the issue of "constructive service" of the FDDA via the denial by respondent of petitioner's request for a copy thereof is long drawn and far removed from the final action of the respondent to collect the alleged deficiency taxes, i.e. the issuance of the PCL and FNBS. Thus, said issue does not fall under "other matters" as it is part and parcel of the disputed assessment

There being no other new issues or matters raised by petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed resolution.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit. Accordingly, the assailed Resolution dated January 16, 2020 is **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice