REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FEDERAL FOOD CORP.,
Petitioner,

-versus-

HON. CAESAR R. DULAY, in his capacity as the Commissioner of the Bureau of Internal Revenue,
Respondent.

CTA Case No. 10829

Members:

UY, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

SEP 2 1 2022 3:50 p.m.

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RESOLUTION

For the resolution of this Court is respondent's **Motion to Dismiss** incorporated in her *Answer* filed on 16 June 2022,[1] to which petitioner failed to file comment, despite due notice.[2]

Respondent alleges that petitioner filed its *Protest* in the form of a *Letter Request for Reconsideration and/or Reinvestigation* on 21 March 2022 and then immediately filed the instant petition before this Court without waiting for the Final Decision on Disputed Assessment ("**FDDA**").[3] Further, respondent avers that the Formal Letter of Demand ("**FLD**") cannot be construed as her "adverse decision" to which this Court can obtain jurisdiction.[4]

In its allegation of timeliness of the *Petition for Review (Petition)*, petitioner submits that its *Petition* is timely filed considering that it has been filed within thirty (30) days from receipt of the FLD.[5] According to petitioner, considering that

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[1] Rollo, pp. 38-56.
[2] Records Verification Report dated 20 July 2022.
[3] Answer (with Motion to Dismiss), pp. 13-14, par. 58.
[4] Answer (with Motion to Dismiss), pp. 5-6, par. 32.
[5] Rollo, p. 8.

the FLD demands payment of alleged deficiency income taxes[6] and is already an attempt for collection, petitioner opted to file the instant *Petition.*[7]

We resolve.

Section 7 of the Republic Act ("**RA**") No. 1125,[8] as amended by RA 9282,[9] provides the jurisdiction of the Court of Tax Appeals. Section 7(a)(1) reads:

> *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 or other laws administered by the Bureau of Internal Revenue.[10]

The same provision is likewise reflected in Section 3(a)(1), Rule 4 of the RRCTA,[11] *viz.*:

> *"SEC. 3. Cases within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
>
> (a) Exclusive original 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."[12]

The crux of the controversy then is whether respondent's FLD is her decision that can be taken cognizance by this Court.

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[6] Petition for Review, par. 10.
[7] Petition for Review, par. 11.
[8] An Act Creating the Court of Tax Appeals, 16 June 1954.
[9] 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, 30 March 2004.
[10] Emphasis and underscoring supplied.
[11] A.M. No. 05-11-07-CTA.
[12] Emphasis and underscoring supplied.

We rule in the negative.

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

> *Section 228. Protesting of Assessment.* - ... ...
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[13]

Relatedly, Revenue Regulations ("**RR**") No. 12-1999,[14] as amended by RR No. 18-2013,[15] implements the above-cited provision, to wit:

> *3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void.
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> 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

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[13] Emphasis and underscoring supplied.
[14] 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, 6 September 1999.
[15] Amending Certain Sections of Revenue Regulations No. 12-99, 28 November 2013.

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.

... ...

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: **(i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period**; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
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> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.
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> 3.1.5 Final Decision on a Disputed Assessment (FDDA). — The decision of the Commissioner or his duly authorized representative shall state the (i) 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), and (ii) that the same is his final decision.[16]

The long-established procedure is that the FDDA is the decision of the Commissioner of Internal Revenue on a protest. It is the FDDA that may be the subject of a Petition for Review before this Court. The Court of Tax Appeals' jurisdiction is over the Commissioner of Internal Revenue's decision on the protest against an assessment, and not the assessment itself.[17]

In *Allied Banking Corporation vs. Commissioner of Internal Revenue* (*Allied Banking* case),[18] the Supreme Court ruled that the taxpayer's filing of a Petition for Review against the FLD is proper considering the tenor of the FLD. We quote:

> "This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable."

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[16] Emphasis and underscoring supplied.
[17] Commissioner of Internal Revenue v. Villa, G.R. No. L-23988, 7 January 1968, 130 SCRA 3-7, cited in Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, G.R. No. 239464, 10 May 2021.
[18] G.R. No. 175097, 5 February 2010, 625 SCRA 530-545.

The Supreme Court said:

> What we are saying in this particular case is that, the Formal Letter of Demand with Assessment Notices which was not administratively protested by the petitioner can be considered a final decision of the CIR appealable to the CTA **because the words used, <u>specifically the words "final decision" and "appeal"</u>, taken together led petitioner to believe that the Formal Letter of Demand with Assessment Notices was in fact the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA.**[19]

The Supreme Court, in *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.,*[20] refused to apply the ruling in the *Allied Banking* case. It ruled:

> However, as previously mentioned, the records of the case show that V.Y. Domingo did receive the certified true copies of the Assessment Notices it requested on September 15, 2011, the day before it filed its petition for review before the CTA First Division. V.Y. Domingo cannot now assert that its recourse to the court was based on its non-receipt of the Assessment Notices that it requested.
>
> Likewise, this Court cannot apply the ruling in *Allied Banking Corporation v. CIR*, wherein the demand letter sent by the CIR was worded as follows:
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> > It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.
>
> **<u>The ruling of this Court in the said case was grounded on the language used and the tenor of the demand letter, which indicate that it was the final decision of the CIR on the matter. The words used, specifically the words "final decision" and "appeal," taken together led therein petitioner to believe that the Formal Letter of Demand with Assessment Notices was, in fact, the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA.</u>**

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[19] Emphasis and underscoring supplied.
[20] G.R. No. 221780, 25 March 2019.

> **Comparing the wording of the above-quoted demand letter with that sent by the CIR to V.Y. Domingo in the instant case, it becomes apparent that the latter's invocation of the ruling in the *Allied Banking Corporation* case is misguided as the foregoing statements and terms are not present in the subject PCL dated August 10, 2011**.[21]

Similarly, a careful perusal of the FLD that was issued to petitioner reveals that the wordings used therein do not merit the application of the *Allied Banking* case. To this Court's mind, the FLD does not lead anyone "to believe that the Formal Letter of Demand with Assessment Notices was, in fact, the final decision of the CIR ... and that the available remedy was to appeal the same to the CTA."

Anent petitioner's allegation that "considering that the FLD demands payment of alleged deficiency income taxes amounting to Php3,833,140.28 on or before March 21, 2011,"[22] is already an attempt for collection, petitioner then properly filed its petition,[23] this Court finds the same to be untenable.

An FLD, from its name, is necessarily a demand for payment. Section 3.1.3 of RR No. 12-1999,[24] as amended by RR No. 18-2013,[25] provides:

> 3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN **calling for payment of the taxpayer's deficiency tax or taxes** shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof).[26]

It is likewise jurisprudential that an assessment, in the context of the NIRC, is a "written notice and **demand** made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and

[21] Emphasis and underscoring supplied; citations omitted.
[22] Petition for Review, par. 10.
[23] Petition for Review, par. 11.
[24] 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, 6 September 1999.
[25] Amending Certain Sections of Revenue Regulations No. 12-99, 28 November 2013.
[26] Emphasis and underscoring supplied.

fixed."[27] A final assessment is a notice "to the effect that the amount therein stated is due as tax and **a demand for payment thereof**."[28] Accordingly, if there was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein, such may not even be considered a valid assessment.[29]

From the foregoing, We do not find merit in petitioner's protestation that, considering the FLD demands for payment, such justifies its immediate invocation of the jurisdiction of this Court. An FDDA must not be confused with an FLD, for the FLD must contain a demand in the first place.

Neither can petitioner seek refuge in the argument that there is inaction on the part of respondent which will allow this Court to obtain jurisdiction under Section 7(a)(2) of RA No. 1125, as amended.[30] We note that as of the time of the filing of petitioner's *Petition for Review* before this Court, respondent's 180-day period to decide under Section 228 of the NIRC, as amended, and as implemented by Section 3.1.3 of RR No. 12-1999,[31] as amended by RR No. 18-2013,[32] has not yet lapsed. Petitioner filed its *Protest* on 21 March 2022 and its *Petition for Review* on 5 April 2022 or only after a mere 15 days. The instant petition is thus prematurely filed.

Finally, the Court finds petitioner's simultaneous resort to a *Protest* before respondent and a *Petition for Review* before this Court as inconsistent with its argument that it treats the FLD as respondent's final decision.

It has been ruled that the **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the

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[27] Commissioner of Internal Revenue vs. Fitness by Design, Inc., G.R. No. 215957, 9 November 2016, 799 SCRA 391-420.
[28] Commissioner of Internal Revenue vs. Menguito, G.R. No. 167560, 17 September 2008, 587 SCRA 234-257.
[29] Adamson vs. Court of Appeals, G.R. Nos. 120935 & 124557, 21 May 2009, 606 SCRA 10-35.
[30] SEC. 7. Jurisdiction. — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(2) Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial.
[31] 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, 6 September 1999.
[32] Amending Certain Sections of Revenue Regulations No. 12-99, 28 November 2013.

right to appeal of a party and **precluding the appellate court** from acquiring jurisdiction over the case.[33]

Accordingly, the failure of petitioner to perfect the appeal in accordance with the prescribed procedure precludes the Court from acquiring jurisdiction over the case and performing any action thereon except to dismiss the same.

When a court or tribunal has no jurisdiction over the subject matter, the only power it has is to **dismiss** the action.[34] After all, the first and fundamental duty of the Court is to apply the law,[35] in this case, the law pertaining to periods to file an appeal which is mandatory and jurisdictional.

WHEREFORE, respondent's **Motion to Dismiss** incorporated in her Answer is **GRANTED**. Accordingly, petitioner's *Petition for Review* is hereby **DISMISSED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[33] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp., G.R. No. 167606, August 11, 2010.
[34] Nuñez vs. GSIS Family Bank, G.R. No. 163988, November 17, 2005 cited in Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp., G.R. No. 167606, August 11, 2010.
[35] Del Monte Land Transport Bus, Co. vs. Armenta, G.R. No. 240144, 3 February 2021; Coam Phil., Inc. vs. Lina, G.R. No. 248413 (Notice), 1 July 2020; Bilag vs. Ay-ay, G.R. No. 189950, 24 April 2017, 809 SCRA 236-248; Guy vs. Guy, G.R. No. 184068, 19 April 2016, 785 SCRA 99-116, citing Rizal Commercial Banking Corp. vs. Intermediate Appellate Court, 378 Phil. 10-31 (1999).