REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PCI MANAGEMENT SOLUTIONS, INC., Petitioner,	CTA CASE NO. 9038
	Members:
-versus-	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
KIM S. JACINTO – HENARES IN HER CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUL 02 2019 10:46 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated April 20, 2015, petitioner PCI Management Solutions, Inc. seeks the cancellation of the assessment issued against it for alleged tax liability for the year 2011 in the amount of ₱15,527,725.25.[1]

Petitioner PCI Management Solutions, Inc. is a domestic corporation, with registered address at Micro Medical Bldg., Pulong Sta. Cruz, Sta. Rosa, Laguna.[2] It is registered with the Bureau of Internal Revenue (BIR) and was issued a Certificate of Registration No. OCN1RC0000259853.[3]

On the other hand, respondent Kim S. Jacinto-Henares is sued in her capacity as former Commissioner of the BIR

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[1] Summary of the Case, Pre-Trial Order, docket, vol. 1, p. 299.
[2] Par. 1, Petition for Review, docket, vol. 1, p. 10.
[3] Exhibit "P-1", docket, vol. 2, p. 416.

who may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On February 5, 2013, the Regional Director of Revenue Region 9 of the BIR issued Letter of Authority (LOA) No. 057-2013-00000029 (SN: eLA201100032909), authorizing the examination of petitioner's books of account for the year 2011. The said LOA was received by petitioner's representative, Sofronio Pilar, on February 18, 2013.[5]

Subsequently, the Revenue District Officer of Revenue District Office (RDO) No. 57 - Biñan, Laguna issued to petitioner the First Notice[6] dated June 4, 2013, followed by the Second and Final Notice for Presentation of Records[7] dated October 10, 2013. In compliance with the said notices, petitioner submitted the required documents on October 25, 2013[8] and November 12, 2013.[9]

On November 27, 2013, Revenue District Officer (RDO) Ramer Narvaez issued a Notice for Informal Conference (NIC)[10] stating that petitioner has deficiency taxes amounting to ₱128,317,260.12. Petitioner protested the assessment for deficiency taxes in its Letter dated December 3, 2013,[11] received by the BIR on December 6, 2013, and stated therein that relevant documents had already been forwarded to it to refute the assessments.

On March 10, 2014, RDO Ramer Narvaez issued an Amended [12] Assessment holding petitioner liable for alleged deficiency income and withholding taxes which the latter received on March 12, 2014.

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[4] Admitted Fact, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 273.
[5] Exhibit R-1, BIR Record, p. 1.
[6] Exhibit R-2, BIR Record, p. 13.
[7] Exhibit R-3, BIR Record, p. 15.
[8] BIR Records, pp. 16-149.
[9] BIR Records, pp. 150-155.
[10] Exhibit P-5, docket, vol. 2, p. 445.
[11] Exhibit P-6, docket, vol. 2, p. 446.
[12] Exhibit R-4, BIR Record, p. 158.

On April 2, 2014, Revenue Officer (RO) Christopher Resari issued a Memorandum[13] recommending the issuance of a Preliminary Assessment Notice (PAN) against petitioner which was approved by RDO Ramer Narvaez. It was forwarded to the Office of the Regional Director, Revenue Region 9, San Pablo City, through 1st Endorsement [14] dated April 4, 2014 issued by RDO Ramer Narvaez.

On May 30, 2014, RDO No. 57 received a letter from petitioner disputing the Amended Assessment.[15]

On July 2, 2014, the PAN[16] was issued. Per the Registry Return Receipt, it was sent to petitioner through registered mail on July 28, 2014. However, the PAN was returned to sender with notation on its envelope "address unknown."

Subsequently, a Formal Letter of Demand (FLD)[17] dated September 12, 2014, with Details of Discrepancies[18] and Audit Results/Assessment Notices[19] were sent to petitioner, with the following details:

TAX TYPE	AMOUNT PAYABLE
Income Tax	₱ 13,915,747.44
Expanded Withholding Tax	23,399.61
Improperly Accumulated Earnings Tax	1,534,578.70
Compromise Penalty	54,000.00
TOTAL	**₱15,527,725.75**

The FLD with attachments was sent to petitioner through mail but it was also returned to sender with the notation on the envelope that the addressee already "moved out."

[13] Exhibit R-6, BIR Record, p. 187.
[14] Exhibit R-5, BIR Record, p. 193.
[15] Exhibit R-7, BIR Record, pp. 169-170.
[16] Exhibit R-23, BIR Record, pp. 202-203.
[17] Part of Exhibit R-24, BIR Record, pp. 206-207.
[18] Part of Exhibit R-24, BIR Record, pp. 204-205.
[19] Exhibit R-4, BIR Record, pp. 208-211.

In view of the said development, the ROs concerned, through a Memorandum of Assignment[20] dated October 24, 2014 and 2nd Indorsement[21] dated October 16, 2014 were instructed to serve the PAN and the FLD constructively.

In a Letter[22] dated November 14, 2014, petitioner objected to the imposition of deficiency improperly accumulated earnings tax issued against it.

In its subsequent Letter of November 27, 2014[23], petitioner indicated the summary of its submission and compliance with the required documents in support of its protest.

On December 4, 2014, a Memorandum[24] was issued stating that the FANs were served at petitioner's registered address on December 3, 2014 and they were received by its secretary Karen Pascual.

In a Letter[25] dated February 4, 2015, petitioner was informed that it could submit all relevant documents to support its protest within sixty (60) days from filing the same, lest the assessment shall become final pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In a Memorandum of Assignment[26] dated March 5, 2015, petitioner was informed that its tax case was referred for reinvestigation pursuant to its request.

In a Letter[27] dated March 23, 2015, received on April 16, 2015, petitioner was advised that the 60-day period for submission of supporting documents had lapsed on January 26, 2015 under Section 228 of the Tax Code, rendering the

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[20] Exhibit R-10, BIR Record, p. 213.
[21] BIR Record, p. 212.
[22] Exhibit "R-13", BIR Record, pp. 241-242.
[23] Exhibit R-14, BIR Record, p. 269.
[24] Exhibit R-11, BIR Record, p. 237.
[25] Exhibit R-15, BIR Record, p. 271.
[26] Exhibit R-12, BIR Record, p. 275.
[27] Exhibit R-16, BIR Record, p. 276.

assessment final and executory and that the case shall already be for collection.

Hence, the instant Petition for Review[28] filed by petitioner on May 6, 2015.

In his Answer[29], respondent questions the jurisdiction of the Court to take cognizance of the instant Petition for Review on the ground that the assailed assessment had gained finality for failure of petitioner to timely file a protest against the FLD with Details of Discrepancies and Audit Results/Assessment Notices.

Admittedly, respondent corresponded with the BIR through its Letters dated November 14, and 27, 2014, however, they could not be deemed as valid protests as petitioner failed to point out any error in the subject assessment not to mention that it was unable to cite the pertinent law, rules and regulations in support thereof.

Further, the subject assessment has factual and legal bases, and issued in compliance with the legal requirements of due process. Through the PAN and the FLD, petitioner was duly informed of the bases of the assessments issued against it. Moreover, the PAN and the FLD sent through registered mail were constructively received by petitioner at its registered address. Subsequently, the FLD was personally served at petitioner's registered address and received by its secretary.

Finally, respondent invokes the tenet that a tax assessment enjoys the presumption of correctness, and the burden to prove otherwise lies on petitioner.

Respondent filed Pre-Trial Brief[30] on January 25, 2016, while petitioner filed its Pre-Trial Brief[31] on January 28, 2016.

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[28] Docket, vol. 1, pp. 10-13.
[29] Docket, vol. 1, pp. 104-120.
[30] Docket, vol. 1, pp. 184-191.
[31] Docket, vol. 1, pp. 241-244.

After the filing of their respective Pre-Trial Briefs, the parties submitted their Joint Stipulation of Facts and Issues[32] on February 26, 2016 on the basis of which the Court issued a Pre-Trial Order[33] on March 30, 2016 and an Amended Pre-Trial Order[34] on July 19, 2016.

To prove its case, petitioner presented two witnesses, namely, Norman Cordon and Sofronio Pilar.

Petitioner's former President, **Norman Cordon**,[35] testified that he managed the day-to-day affairs of the company including its finances.

Petitioner is registered with the BIR and for the year 2011, it paid income, withholding and value- added taxes as shown in its BIR Income Tax and VAT returns. After such payment, petitioner received a LOA from respondent. Upon request, petitioner allowed the investigating ROS to inspect its books of account and submitted copies thereof together with certain schedules.

Thereafter, petitioner received a NIC with deficiency tax assessment to which it filed a protest. Acting on the said protest, respondent issued an Amended Assessment reducing the amount of its tax liability to which petitioner again protested.

In a letter of March 23, 2015, respondent informed petitioner that its case had been set for reinvestigation. Since no further assessment notices were received, petitioner did not send any other communication to the BIR.

The witness further testified that the 180 days for respondent to act on petitioner's protest had already lapsed on April 11, 2015, prompting the latter to elevate its case to the Court through a Petition for Review within the prescribed 30-day period.

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[32] Docket, vol. 1, pp. 272-281.
[33] Docket, vol. 1, pp. 299-303.
[34] Docket, vol. 1, pp. 359-363.
[35] Minutes of the hearing dated August 1, 2016, docket, vol. 1, p. 368; Judicial Affidavit dated January 28, 2016, docket, vol. 1, pp. 245-251; with cross examination, see TSNs dated November 7, 2016 and February 13, 2017.

Petitioner believes that the assessment issued against it was erroneous for it included in the computation of the deficiency taxes for the year 2011 its sales recorded in 2010 for which taxes had also been paid in 2010, simply because they were collected only in 2011. Further, the disallowance of the salaries and wages of workers, resulting in an increased income, could be easily disproved by the Alpha List Report submitted to respondent. Finally, the 25% improperly accumulated earnings tax imposed by respondent was negated by petitioner's board resolution authorizing the allotment of accumulation of earnings for the daily expenses of the corporation.

The second witness **Sofronio Pilar**,[36] a certified public accountant, testified that he was engaged by petitioner to audit its books of account, financial statements, tax returns, schedule of sales, alpha list report, and the supporting documents of its journal entries for the year 2011. He examined the assessment and the amended assessment issued by the BIR against petitioner to trace or reconcile them with the books of petitioner.

After audit, he found the original assessments and amended assessment erroneous. Specifically, (1) the disallowance of the recorded salaries and wages of workers thereby overstating petitioner's income, (2) the sales recorded and included in the computation of taxes in the year 2010 which were collected only in the year 2011 were included in the assessment for 2011, and, (3) the improperly accumulated retained earnings tax was improper as it was allotted for the company's operations. The erroneous findings of respondent could be rebutted by petitioner's BIR Form No. 1604CF alphalist, sales schedules, and board resolutions for the appropriated retained earnings.

After formal offer of evidence, petitioner rested its case, per Resolution[37] dated June 5, 2017.

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[36] Minutes of the hearing dated May 9, 2017, docket, vol. 2, p. 409; Judicial Affidavit dated March 15, 2016, docket, vol. 2, pp. 517-521; with cross examination, see TSN dated May 9, 2017.

[37] Docket, vol. 2, pp. 528-529.

Respondent, on the other hand, presented Revenue Officers (ROs) Amapola Jane C. San Juan, Janet C. Castillo, and Norma Dime, and the Group Supervisor Leopoldo Bulda, Jr., as witnesses.

RO **Amapola Jane C. San Juan**[38] testified that the instant case was reassigned to her for review of the result of the audit/investigation conducted to determine the internal revenue tax liability of petitioner. Her review revealed that petitioner was liable for Improperly Accumulated Earnings Tax, apart from the deficiency Income Tax and Expanded Withholding Tax recommended by the examining ROs. Accordingly, she prepared the PAN which was issued to petitioner.

Some fifteen (15) days from the issuance of the PAN, she prepared the FLD with Details of Discrepancies and Assessment Notices which were served constructively to petitioner.

The witness admitted that certain sales for the year 2010, which were collected and paid only in 2011 were included in the assessment for the year 2011 although the actual sales occurred and recorded in petitioner's books in 2010.

On the other hand, the salaries and wages were disallowed resulting in a higher assessment as petitioner was unable to submit proof of the salaries and wages of petitioner's employees such as payroll summary, and other supporting documents. The only proof it submitted on this regard was the Alpha List of employees, which was not legible.

On the Improperly Accumulated Earnings Tax, the witness admitted that the same could only be imposed on the free retained earnings of petitioner.

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[38] Minutes of the hearing dated September 5, 2017, docket, vol. 2, p. 540; Judicial Affidavit dated January 20, 2016, docket, vol. 1, pp. 236-240; with cross examination, see TSN dated September 5, 2017.

RO **Janet Carmel C. Castillo**[39] declared that the case of petitioner was reassigned to her for enforcement of collection per recommendation of the investigating RO.

Her review of the case docket showed that the assessment had already become final and executory, hence, she prepared a Memorandum Report dated July 7, 2015 affirming the recommendation for enforcement of collection. Thereafter, she prepared the Final Decision on Disputed Assessment (FDDA) which was forwarded together with the BIR Record to the BIR Litigation Division.

RO **Norma P. Dime**[40] testified that she conducted the reinvestigation of petitioner's case for all internal revenue tax liabilities pursuant to a Memorandum of Assignment dated March 5, 2015. Reinvestigation was warranted as petitioner filed a protest against the FLD and expressly requested for a review/reinvestigation of the subject assessments in its Letter dated November 27, 2014.

The reinvestigation centered on the issues raised by petitioner in its correspondences with respondent and did not validate or check the correctness of the original assessment.

She further testified that in a letter dated February 4, 2015, petitioner was informed that the case would be forwarded to RDO No. 57, Biñan City for further evaluation, hence, petitioner should submit relevant documents to support its protest.

She thereafter sent a letter dated March 23, 2015 which petitioner received on April 16, 2015, informing the latter that the assessment had already become final and executory, and already ripe for collection. She then prepared a Memorandum Report dated May 7, 2015 recommending the collection of the deficiency taxes which

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[39] Minutes of the hearing dated September 5, 2017, docket, vol. 2, p. 540; Judicial Affidavit dated January 20, 2016, docket, vol. 1, pp. 225-229; no cross examination, see TSN dated September 5, 2017, p. 37.
[40] Minutes of the hearing dated October 10, 2017, docket, vol. 2, p. 542; Judicial Affidavit dated January 19, 2016, docket, vo. 1, pp. 199-204; with cross and redirect examination, see TSN dated October 10, 2017.

was forwarded to the Office of the Regional Director for action.

RO **Leopoldo R. Bulda**,[41] the group supervisor, testified that they conducted the audit/investigation of petitioner's tax liability for the year 2011 pursuant to LOA No. 057-2013-00000029 dated February 5, 2013.

A First Notice dated June 4, 2013, and a Second and Final Request for Presentation of Records dated October 10, 2013 were issued to petitioner, requesting for the presentation of accounting records for purposes of the audit, but petitioner was unable to submit all the required documents.

In a letter dated March 10, 2014, petitioner was informed that it was found liable for deficiency income tax and withholding tax. Since there was no settlement of the said deficiency taxes, a recommendation for the issuance of the PAN was sent to the BIR Assessment Division.

Petitioner objected to the assessment through a letter dated March 10, 2014, which he received on May 30, 2014. It was forwarded to the Assessment Division which prepared the PAN and the FLD, with the instruction to constructively serve them. However, the FLD was also personally served on petitioner.

As a group supervisor, he merely reviewed and approved the recommendation and memorandum of the RO who actually audited petitioner. He did not go over the documents which the RO examined and used to arrive at the recommendation for the imposition of deficiency taxes on petitioner.

Respondent formally offered his documentary and testimonial evidence, all of which were admitted on March 26, 2018.[42]

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[41] Minutes of the hearing dated February 12, 2018, docket, vol. 2, p. 565; Judicial Affidavit dated October 23, 2017, docket, vol. 2, pp. 549-557; with cross examination, see TSN dated February 12, 2018.
[42] Docket, vol. 2, pp. 584-585.

The case was submitted for decision on July 2, 2018.[43]

STATEMENT OF ISSUES

The parties submitted the following issues for this Court's resolution:[44]

1. Whether the Honorable Court has jurisdiction over the instant petition; and

2. Whether petitioner is liable to pay deficiency Income Tax, Expanded Withholding Tax, Improperly Accumulated Earnings Tax, and Compromise Penalty in the amount of ₱15,527,725.75 for the year 2011, as well as the corresponding penalty and deficiency and delinquency interests pursuant to Sections 248 and 249 of the NIRC of 1997.

THE RULING OF THE COURT

The crux of the present controversy is the jurisdiction of the Court to hear and determine the present Petition for Review. For petitioner, its appeal was seasonably filed with the Court vesting it with the required competence to entertain the same. Respondent, on the other hand, insists that the Court has no authority to rule on the appeal as it was filed out of time.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[45] The instant case disputing the internal revenue tax assessments issued by respondent certainly falls within the competence of the Court as provided in Section 7(a)(1) and (2) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, to wit:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

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[43] Resolution, docket, vol. 2, p. 632.
[44] Issues, Pre-Trial Order, docket, vol. 1, p. 300.
[45] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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;
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> (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;

In connection with the foregoing, Section 228 of the NIRC of 1997, as amended, provides in part, thus:

> SEC. 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
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> 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.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

Further, Section 3.1.5 of Revenue Regulations (RR) No. 12-99 provides:

> 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 the date of receipt thereof. xxx
>
> **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.** xxx
>
> xxx xxx xxx
>
> **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.** *(Emphasis supplied)*

Thus, for an assessment to be valid, due process requirements must first be complied with. Section 228 of the Tax Code clearly requires that the taxpayer must first be informed in writing that he is liable for tax deficiency through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made, lest the assessment shall be deemed void and without any legal consequence. The law imposes a substantive, not merely a formal requirement. The mandate is meant to give the taxpayer the opportunity to present his case and adduce supporting documents.

The taxpayer such as petitioner, on the other hand, is mandated by law to timely file a protest against the assessment validly issued stating the **facts, the applicable law, rules and regulations or jurisprudence on which the protest is based**. Failure to comply therewith shall render the protest letter void and without force and effect.

If the protest is denied in whole or in part, or remain unacted upon by respondent within one hundred eighty (180) days from submission of complete documents, the aggrieved taxpayer, such as petitioner, may elevate its case to this Court within thirty (30) days from receipt of the adverse decision or the lapse of the 180-day period, otherwise, the assessment shall become final, executory and demandable.

Evidence show that even before the issuance of the PAN and FLD, petitioner and respondent had been trading correspondences pertaining to the alleged tax liabilities of petitioner. The LOA, the First Notice and the Second and Final Notice for presentation of records respectively dated June 4, 2013 and October 10, 2013, Notice for Informal Conference, Amended Notice/Assessment were sent and received by petitioner at its registered address at 2F Micromedical Bldg. Pulong Sta. Cruz, Sta. Rosa City, Laguna and accordingly responded through Letter dated December 3, 2013, and reply letter dated March 10, 2014 which respondent received on May 30, 2014,[46] in which it disputed the "amended assessment notice."

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[46] Exhibit "R-7", BIR Records, p. 170.

Subsequently, a PAN was issued and sent to petitioner via registered mail at the very same registered address on July 28, 2014.[47] On September 12, 2014, a FLD of even date[48] with Details of Discrepancies and Audit Results/Assessment Notices were sent to petitioner through registered mail at its registered address. However, both the PAN and the FLD were returned to sender with notation on their respective envelopes "address unknown" and "moved out."

The record is however mute as whether petitioner had changed its registered address or moved out of its former office, or had notified respondent of such change or transfer.

Significantly, petitioner itself never claimed any change in its registered address. Neither was there a hint that it transferred office or place of business. The Court cannot also ignore petitioner's own evidence, namely, BIR Certificate of Registration No. OCN1RC0000259853[49] dated August 23, 2006, Minutes of Special Board Meeting[50] dated December 19, 2010, Quarterly Income Tax Returns for the second,[51] and third[52] quarters of the year 2011, Annual Income Tax Return[53] for the year 2011, and Quarterly Value-Added Tax Returns for the second,[54] and fourth[55] quarters of the year 2011, confirming that petitioner's registered address as 2F, Micro Medical Building, Sitio Aratan, Pulong Sta. Cruz, Sta. Rosa, Laguna,

In any event, Section 11 of RR No. 12-85[56] is instructive on this regard, thus:

> SECTION 11. *Change of Address.* - In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal

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[47] Exhibit "R-23", BIR Records, p. 203.
[48] Exhibit "R-24", BIR Records, pp. 204-211.
[49] Exhibit P-1, docket, vol. 2, p. 416.
[50] Exhibit P-4, docket, vol. 2, pp. 438-444.
[51] Exhibit P-12, docket, vol. 2, p. 464.
[52] Exhibit P-13, docket, vol. 2, p. 465.
[53] Exhibit P-14, docket, vol. 2, pp. 466-468.
[54] Exhibit P-19, docket, vol. 2, p. 483.
[55] Exhibit P-15, docket, vol. 2, p. 469.
[56] Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue.

> residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and **in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.** *(Emphasis supplied)*

For petitioner's failure to formally notify the Revenue District Officer that has jurisdiction over its former legal residence and/or place of business of its change of address, any communication previously sent to its former legal residence or place of business shall be considered valid and binding for purposes of the counting of the period within which to reply or file its protests. In other words, the service of the PAN on July 28, 2014 and the FAN and the FLD on September 12, 2014 to petitioner via registered mail are deemed valid and binding.

Under Section 11[57] of Revenue Regulation No. 12-85, [58] petitioner's failure to give written notice of change of address bound it to whatever communications were sent to the address appearing in the tax returns for the period involved in the investigation.[59]

Thus, counting 30 days from September 16, 2014, when the FLD was delivered, petitioner had until October 16, 2014 within which to reply to the FAN and the FLD, hence,

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[57] SECTION 11. *Change of Address.* – In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and **in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.**" *(Emphasis supplied)*

[58] Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue.

[59] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.

petitioner's alleged protest letters of November 14, 2014 and the November 27, 2014 were filed out of time.

But even assuming that the alleged protest letters dated November 14, 2014[60] and November 27, 2014[61] were timely filed, a careful scrutiny of the said letters showed that petitioner failed to file a valid protest as it failed to indicate the applicable law, rules and regulations or jurisprudence on which the protests were based. Moreover, the Letter[62] dated November 14, 2014 assailed only the assessed deficiency improperly accumulated earnings tax imposed by respondent while the Letter dated November 27, 2014,[63] merely indicated petitioner's submission of documents in support of its protest against the issuance of LOA No. 057-2013-00000029, hence, cannot be deemed a valid protest against the FLD.

Petitioner's alleged "protest" letter mailed on May 28, 2014 cannot also be deemed as an administrative protest contemplated under the rules as it was merely a reply to the "amended assessment notice" sent by respondent ***prior*** to the issuance of the PAN, the FAN, and the FLD.

Aside from service of assessment notices via registered mail, copies of the FAN and FLD were also personally served on December 3, 2014 by the BIR examiner in-charge at petitioner's registered address and they were received by petitioner's secretary Karla Pascual.[64] Despite receipt, petitioner failed to challenge the said FAN and FLD.

Under Section 3.1.5 of Revenue Regulations No. 12-99, 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, the assessment shall become final, executory and demandable. Consequently, the Court has no jurisdiction to take cognizance of the present Petition for Review.

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[60] Exhibit "R-13", BIR Records, pp. 241-242.
[61] Exhibit "R-14", BIR Records, p. 269.
[62] Exhibit "R-13", BIR Record, pp. 241-242.
[63] Exhibit R-14, BIR Record, p. 269.
[64] BIR Records, pp. 217-224.

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.

The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[65]

In view of the foregoing finding of the Court, discussion on the other issue raised by petitioner becomes unwarranted.

WHEREFORE, premises considered, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[65] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

I Concur:

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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting 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.

ERLINDA P. UY
Acting Presiding Justice