REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LARRY E. SEGAYA/LES ENGINEERING AND CONSTRUCTION, Petitioner,	**CTA CASE NO. 9875**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson,* **and** **Bacorro-Villena,** *JJ.*
COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, Respondent.	**Promulgated:** FEB 26 2021

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10:15 a.m.

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on July 16, 2018, prays that the *Final Decision on Disputed Assessment* (FDDA) issued against petitioner, be declared null and void.[1]

THE PARTIES

Petitioner Larry E. Segaya is a taxable entity.[2]

[1] Refer to Pre-Trial Order dated January 22, 2019, Docket, p. 161; Refer also to petitioner's prayer in the instant *Petition for Review*, Docket, at p. 24.
[2] Par. 2, Summary of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 133.

Respondent Commissioner of Internal Revenue is the duly appointed authority to administer and enforce all revenue laws in the land, with office address at the Bureau of Internal Revenue (BIR) National Building, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On November 28, 2012, the *Letter of Authority* (LOA) No. LOA-074-2012-00000280 (SN: eLA201000056710) dated November 16, 2012 was issued by the BIR, authorizing Revenue Officer Michelle Ann Gayoma and Group Supervisor Evansuenda Custodio of Revenue District No. 074-Iloilo City, Iloilo, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011.[4]

Subsequently, petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* on August 1, 2014; and the same was accepted by respondent on August 18, 2014.[5]

Thereafter, respondent issued the *Preliminary Assessment Notice* (PAN) dated November 19, 2015, with *Details of Discrepancies*, informing petitioner of the BIR's finding of deficiency income taxes, value-added tax (VAT), expanded withholding tax (EWT), and suggested compromise penalty, for calendar year 2011.[6] On January 12, 2016, petitioner filed his letter dated January 4, 2016 with the BIR, disputing the said PAN.[7]

In the letter dated January 28, 2016,[8] Ms. Emeralda M. Tabule, Regional Director of Revenue Region No. 11 – Iloilo City, replied to the letter dated January 4, 2016 of petitioner, and informed the latter that the *Formal Letter of Demand* (FLD) dated December 17, 2015 was already issued and served to him through registered mail.[9] ~~

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[3] Par. 1, Summary of Facts, JSFI, Docket, p. 133.
[4] Exhibit "R-4", BIR Records, p. 54.
[5] Exhibit "P-1-A", Docket, p. 237; Exhibit "R-9", BIR Records, p. 202.
[6] Exhibit "P-2", Docket, pp. 238 to 241; Exhibits "R-13" and "R-13-A", BIR Records, pp. 306 to 309.
[7] Exhibit "R-15", BIR Records, pp. 322 to 326.
[8] Exhibit "P-5", Docket, p. 259.
[9] Refer also to Par. 6, *Petition for Review*, vis-à-vis Par. 4, *Answer*, Docket, pp. 11 and 71 to 72, respectively.

The said FLD, with *Assessment Notices* and *Details of Discrepancies*, informs petitioner that after investigation, there has been found due from him, deficiency income tax, VAT, EWT, in the respective amount of ₱2,865,589.92; ₱7,332,512.55; and ₱13,282.50; with suggested compromise penalties in the total amount of ₱22,000.00.[10] Petitioner then filed his *Protest/Request for Reconsideration* dated March 12, 2016 on March 21, 2016, requesting for the setting aside of the said FLD and *Assessment Notices*.[11]

Subsequently, BIR Revenue Region No. 11 sent, by way of registered mail, the letter dated April 11, 2016, informing petitioner that his protest and the entire docket thereof was returned to RDO No. 74 of Iloilo City for proper action on the matter.[12]

In her letter dated May 30, 2017,[13] Ms. Lilivic Minguez-Gatdula, Revenue District Officer (RDO) of Revenue District No. 74, found that there is no merit on the issues raised in petitioner's *Protest/Request for Reconsideration* dated March 12, 2016, and informed petitioner that her office will continue the assessment procedure.

Petitioner then filed his appeal before the office of respondent, praying that the said letter dated May 30, 2017 RDO Minguez-Gatdula be reversed and set aside.[14]

In the Memorandum dated October 5, 2017 issued by Atty. Hayle F. Bonilla, Chief of the Appellate Division of the BIR,[15] the said appeal, including the attachments thereto, was forwarded to the Regional Director, Revenue Region No. 11- Iloilo City, for the continuance of the assessment procedures and the issuance of an FDDA, pursuant to the provisions of Revenue Regulations No. (RR) 12-99, as amended by RR No. 18-2013.

In the meantime, however, Regional Director Alberto S. Olasiman of Revenue Region No. 11- Iloilo City, issued the FDDA dated September 12, 2017, denying, in effect, petitioner's

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[10] Exhibits "P-4", "P-4-B", "P-4-C", "P-4-D", and "P-4-E", Docket, pp. 247 to 257; Exhibits "R-14" and "R-14-A", BIR Records, pp. 310 to 321.
[11] Exhibit "R-15", BIR Records, pp. 333 to 342.
[12] Par. 7, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket, pp. 11 and 72, respectively.
[13] Exhibit "P-7", Docket, pp. 274 to 275; BIR Records (Exhibit "R-15"), pp. 356 to 357.
[14] Exhibit "P-8", Docket, pp. 276 to 277; Exhibit "R-15", BIR Records, pp. 370 to 372.
[15] Exhibit "R-15", BIR Records, p. 388.

Protest/Request for Reconsideration dated March 12, 2016.[16] On October 27, 2017, the assailed FDDA was received by petitioner.[17] Consequently, petitioner, through counsel, filed with respondent a *Request for Reconsideration/Reinvestigation* on November 25, 2017.[18]

PROCEEDINGS BEFORE THIS COURT

Due to the alleged inaction of respondent, petitioner filed the instant *Petition for Review* on July 16, 2018.[19]

On October 19, 2018, respondent posted his *Answer*,[20] interposing certain special and affirmative defenses, to wit: (1) his right to assess has not prescribed; (2) the assessment has factual and legal basis; and (3) petitioner is liable for the assessed deficiency taxes.

The Pre-Trial Conference was set and held on November 22, 2018.[21] Prior thereto, *Respondent's Pre-Trial Brief* was filed on November 16, 2018;[22] while petitioner's *Pre-Trial Brief* was posted on the same date.[23]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on December 27, 2018.[24] Thereafter, the Court issued the Pre-Trial Order dated January 22, 2019,[25] approving and adopting the said JSFI.

In the meantime, respondent transmitted the *BIR Records* on January 4, 2019.[26]

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[16] Exhibit "P-10", Docket, pp. 282 to 283; Exhibit "R-21", BIR Records, pp. 389 to 390.
[17] Par. 10, *Petition for Review*, vis-à-vis Par. 6, *Answer*, Docket, pp. 11 and 71 to 72, respectively. N.B.: The said Par. 10 was erroneously referred to as "paragraph 7" in the *Answer*.
[18] Exhibit "P-11", Docket, pp. 284 to 289. Refer also to Par. 10, *Petition for Review*, Docket, p. 12.
[19] Docket, pp. 10 to 18 (cf: Par. 1, *Petition for Review*, Docket, at p. 10).
[20] Docket, pp. 71 to 87.
[21] *Notice of Pre-Trial Conference* dated October 26, 2018, Docket, pp. 89 to 90; Minutes of the hearing held on, and Order dated, November 22, 2018, Docket, pp. 108 to 109.
[22] Docket, pp. 91 to 94.
[23] Docket, pp. 104 to 105.
[24] Docket, pp.133 to 135.
[25] Docket, pp. 161 to 164.
[26] *Compliance* dated January 3, 2019, Docket, pp. 142 to 144.

On January 28, 2019, petitioner filed *via courier* a *Manifestation with Request/Motion for Admission of the Authenticity of Photocopied Documents and to be Furnished with Copies of Respondent's Exhibits Referred to in the Judicial Affidavit of its Witnesses.*[27] Respondent filed an *Opposition (On Petitioner's Motion dated January 25, 2019).*[28]

In the Resolution dated April 2, 2019,[29] the Court: (1) partially granted petitioner's *Request/Motion for Admission of the Authenticity of Photocopied Documents*; and denied petitioner's *Request to be Furnished with Copies of Respondent's Exhibits Referred to in the Judicial Affidavit of its Witnesses.*

Trial proceeded.

During trial, petitioner presented his documentary and testimonial evidence. He proffered his own testimony.[30]

However, at the hearing held on July 22, 2019, petitioner was deemed to have waived his right to present further testimonial evidence, considering the oral motion of respondent, and for failure of petitioner's counsel and his witness to appear despite due notice.[31]

On July 29, 2019, petitioner's counsel filed a *Manifestation with Motion to Withdraw and for Time to File Formal Offer of Exhibits,*[32] which the Court noted and granted in the Resolution dated August 6, 2019.[33] Thus, petitioner was directed to cause the entry of appearance of its new counsel.[34] The Court then received on September 19, 2019, an *Entry of Appearance* filed by Atty. Theodore P. Banderado as new counsel for petitioner,[35] and noted the same.[36]

In the meantime, petitioner filed his *Offer of Exhibit* on August 20, 2019.[37] Respondent submitted his *Comment (on Petitioner's*

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[27] Docket, pp. 166 to 167.
[28] Docket, pp. 196 to 199.
[29] Docket, pp. 203 to 208.
[30] Exhibit "P-14", Docket, pp. 231 to 237; Minutes of the hearing held on, and Order dated, June 3, 2019, Docket, pp. 300 to 301.
[31] Minutes of the hearing held on, and Order dated, July 22, 2019, Docket, pp. 309 to 310.
[32] Docket, pp. 312 to 313.
[33] Docket, pp. 317 to 318.
[34] *Id.*
[35] Docket, pp. 336 to 337.
[36] Minute Resolution dated September 24, 2019, Docket, p. 342.
[37] Docket, pp. 319 to 322.

Formal Offer of Evidence).[38] In the Resolution dated September 26, 2019,[39] the Court admitted petitioner's exhibits, *except* for Exhibits "P-1", "P-3", "P-6", and "P-12", for failure to present the originals for comparison.

Petitioner then filed a *Motion for Partial Reconsideration* on November 7, 2019.[40] Respondent, however, failed to file a comment thereon.[41] In the Resolution dated February 18, 2020,[42] the said *Motion* was denied.

Respondent likewise presented his documentary and testimonial evidence. He offered the testimonies of the following individuals, namely: (1) Ms. Ronela L. Janapon,[43] a Revenue Officer III of the BIR; and (2) Ms. Ma. Cecilia Nava,[44] also a Revenue Officer III of the BIR.

Thereafter, respondent filed his *Formal Offer of Evidence* on January 27, 2020.[45] Petitioner filed his *Comment to Formal Offer of Exhibits* on February 5, 2020.[46] In the Resolution dated February 18, 2020,[47] the Court admitted respondent's exhibits.

Petitioner's *Memorandum with Tender Excluded Evidence (for the Petitioner)* was posted on June 3, 2020;[48] while the *Memorandum for the Respondent* was filed on July 2, 2020.[49]

On August 24, 2020, this case was considered submitted for decision.[50] gr

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[38] Docket, pp. 325 to 326.
[39] Resolution dated September 26, 2019, Docket, pp. 340 to 341.
[40] Docket, pp. 346 to 347.
[41] Records Verification dated December 5, 2019 issued by the Judicial Records Division of this Court, Docket, pp. 352.
[42] Resolution dated February 18, 2020, Docket, pp. 371 to 374.
[43] Exhibit "R-22", Docket, pp. 152 to 157; Minutes of the hearing held on, and Order dated, October 28, 2019, Docket, pp. 344 to 345; Minutes of the hearing held on, and Order dated, December 9, 2019, Docket, pp. 353 to 354.
[44] Exhibit "R-22", Docket, pp. 123 to 132; Minutes of the hearing held on, and Order dated, December 9, 2019, Docket, pp. 353 to 354.
[45] Docket, pp. 358 to 365.
[46] Docket, pp. 367 to 368.
[47] Docket, pp. 371 to 374.
[48] Docket, pp. 397 to 405.
[49] Docket, pp. 375 to 395.
[50] Resolution dated August 24, 2020, Docket, p. 408.

THE ISSUES STIPULATED BY THE PARTIES

The following are the statements of the issues as stipulated by the parties, to wit:

"Both parties agreed on the following common issue:

1. Whether or not Petitioner is liable to pay assessed deficiency income tax, value added tax and, plus surcharge and interests and compromise penalties, in the aggregate amount of P10,233,384.07 for taxable year 2011.

Petitioner submits the following issues for resolution of the Court:

2. Whether or not the right to assess the petitioner of the alleged tax deficiency, subject matter of this case, has already prescribed?

3. Whether or not the alleged tax deficiency of the petitioner for the year 2011 has factual and legal basis?"[51]

Petitioner's arguments:

Petitioner argues that the defects in the *Waivers* resulted to the non-extension of the period to assess or collect taxes, and made the assessments issued by the BIR beyond the three-year prescriptive period void; and that the assessment has no legal and factual basis.

Respondent's counter-arguments:

Respondent counters that his right to assess has not prescribed; that the assessment have factual and legal bases; and that petitioner is liable for the assessed deficiency taxes.

THE COURT'S RULING

The instant *Petition for Review* must be dismissed. ✓

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[51] Statement of Issues, JSFI, Docket, p. 133.

To obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings. Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at anytime of the proceedings, even during appeal.[52]

To be sure, the matter of jurisdiction may be ruled upon regardless of the stage of the proceedings, considering that a judgment rendered without jurisdiction is null and void, and a void judgment cannot be the source of any right whatsoever.[53]

Thus, this Court shall first determine whether it has jurisdiction to entertain the present appeal.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action**.[54]

Section 7(a)(1) and (2), and 11 of RA No. 1125,[55] as amended by RA No. 9282,[56] confers jurisdiction to this Court relative to

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[52] Refer to *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.
[53] Refer to *El Greco Ship Manning and Management Corporation vs. Commissioner of Customs*, G.R. No. 177188, December 4, 2008.
[54] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[55] AN ACT CREATING THE COURT OF TAX APPEALS.
[56] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

decisions and inactions of respondent, and states the manner of appealing the same, to wit:

> "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 Code or other laws administered by the Bureau of Internal Revenue;
>
> (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**;" *(Emphases added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
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> xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provisions, this Court has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action. *9r*

Anent the period fixed by law for action in the case of disputed assessments, Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "SEC. 228. *Protesting of Assessment.* – xxx
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> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx
>
> 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</u>, 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, <u>or from the lapse of the one hundred eighty (180)-day period</u>; otherwise, the decision shall become final, executory and demandable.**" *(Emphasis added)*

Hence, based on this provision, after the filing of a protest against a tax assessment, the period of action on the part of respondent is one hundred eighty (180) days from the submission of documents which must be done within sixty (60) days from the filing of the protest.

Section 3.1.5 of RR No. 12-99,[57] as amended by RR No. 18-2013,[58] implementing Section 228 above, clarifies, *inter alia*, as to when the 180-day period commences, to wit:

> "3.1.5 *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:
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> (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 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.*
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> xxx xxx xxx
>
> **<u>For requests for reinvestigation</u>, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the**

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[57] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

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

assessment shall become final. The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **<u>The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration</u>.** Furthermore, the term 'the assessment shall become final' shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

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 Appeal (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 <u>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 for 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</u>, 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, <u>by the Commissioner</u>, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the 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.

<u>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</u>, 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.

<u>It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer</u> 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, <u>are mutually exclusive and the resort to one bars the application of the other</u>." *(Emphases and underscoring added)*

Based on the foregoing provisions, the following rules are established, especially relative to the periods within which a taxpayer may file an appeal before this Court, *viz.*: *ge*

1. A protest may either be a *request for reconsideration* or a *request for reinvestigation.*

2. For *requests for reinvestigation*, the concerned taxpayer must, within sixty (60) days from the filing thereof, submit all relevant supporting documents; otherwise, the assessment shall become final. This 60-day period is not applicable to *requests for reconsideration.*

3. If the protest, which may either be a *request for reconsideration* or *request for reinvestigation*, is denied, in whole or in part, by the <u>respondent's duly authorized representative</u>, the concerned taxpayer has two (2) options:

   (i) Appeal to this Court within thirty (30) days from date of receipt of the said decision; or

   (ii) Elevate the said protest through a *request for reconsideration* to respondent, as an administrative appeal, within thirty (30) days from date of receipt of the said decision.

4. If, however, the same protest is not acted upon by <u>respondent's duly authorized representative</u> within one hundred eighty (180) days counted from the date of filing of the protest in case of a *request for reconsideration*; or from the date of submission by the taxpayer of the required documents [which must be made within sixty (60) days from the date of the filing of the protest] in case of a *request for reinvestigation*, the concerned taxpayer has also two (2) options:

   (i) Appeal to this Court within thirty (30) days after the expiration of the 180-day period; or

   (ii) Await the final decision of <u>respondent's duly authorized representative</u> on the disputed assessment.

5. If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by <u>respondent himself</u>, the concerned taxpayer must appeal such denial to this Court within thirty (30) days from the date of receipt of the decision; otherwise, the assessment shall become final, executory and demandable. A *motion for reconsideration* of respondent's denial of the said protest or administrative gr

appeal, as the case may be, does *not* toll the said thirty (30)-day period to appeal to this Court.

6. If the same protest or administrative appeal is not acted upon by respondent himself within one hundred eighty (180) days **counted from the date of filing of the protest**, the concerned taxpayer has two (2) options:

   (i) Appeal to this Court within thirty (30) days after the expiration of the said 180-day period; or

   (ii) Await the final decision of respondent on the disputed assessment, and appeal such final decision to this Court within thirty (30) days after the receipt of a copy of such decision.

7. In case of inaction on the protested assessment within the 180-day period, the options of the taxpayer to either: (a) file a petition for review with this Court within thirty (30) days after the expiration of the 180-day period; or (b) await the final decision of respondent or his duly authorized representative on the disputed assessment, and appeal such final decision to this Court within thirty (30) days after receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.

In this case, while it may be true that there was a premature filing by petitioner of an administrative appeal to respondent, praying for the reversal and setting aside of the letter dated May 30, 2017 of RDO Lilivic Minguez-Gatdula,[59] it can be said that petitioner eventually waited for the issuance of the FDDA dated September 12, 2017, denying, in effect, his *Protest/Request for Reconsideration*.[60] Such being the case, pursuant to the above-quoted provisions of RR No. 12-99, as amended by RR No. 18-2013, petitioner had the following options concerning such FDDA, to wit: (1) appeal to this Court within thirty (30) days from October 27, 2017, which is the date of receipt by petitioner of the said FDDA;[61] or (2) elevate the said protest through a *request for reconsideration* to respondent, as an administrative appeal, within thirty (30) days from same date of receipt. gr

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[59] Exhibit "P-8", Docket, pp. 276 to 277; Exhibit "R-15", BIR Records, pp. 370 to 372.
[60] Exhibit "P-10", Docket, pp. 282 to 283; Exhibit "R-21", BIR Records, pp. 389 to 390.
[61] Par. 10, *Petition for Review*, vis-à-vis Par. 6, *Answer*, Docket, pp. 11 and 71 to 72, respectively. N.B.: The said Par. 10 was erroneously referred to as "paragraph 7" in the *Answer*.

Indisputably, petitioner, through counsel, availed of the second option by filing with respondent a *Request for Reconsideration/ Reinvestigation* on November 25, 2017.[62] Thereafter, alleging inaction on the part of respondent, petitioner filed the instant *Petition for Review* on July 16, 2018.[63] Corollarily, the records are bereft of any indication that respondent rendered a decision, or even acted, on petitioner's *Request for Reconsideration/ Reinvestigation.*

With these factual milieux, this Court is without jurisdiction to entertain the instant *Petition for Review.*

To be clear, according to the aforequoted Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, the 180-day period in case of an administrative appeal is *"counted from the date of filing of the protest"*, and after the expiration of such period, the concerned taxpayer has a 30-day period within which to file an appeal before this Court.

Records show that petitioner filed his *Protest/Request for Reconsideration* on March 21, 2016.[64] Counting from this date, the 180-day period ended on September 17, 2016. Thus, should petitioner have chosen to appeal the inaction before this Court, petitioner can only do so until October 17, 2016. Correspondingly, the filing of the instant *Petition for Review* on July 16, 2018 was belatedly made.

The issuance of the FDDA on September 12, 2017 does not negate the rule stated in Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, since such rule is clear, *i.e.*, the 180-day period in case of an administrative appeal is *"counted from the date of filing of the protest"*.

Apparently, once the said 180-day period lapses, there is no other remedy for the concerned taxpayer except to wait for the decision of respondent over the administrative appeal, and upon receipt thereof, appeal such decision with this Court within thirty (30) days. This is a reasonable reading of Section 228 of the NIRC of 1997, since this provision establishes only one 180-day period, for

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[62] Exhibit "P-11", Docket, pp. 284 to 289. Refer also to Par. 10, *Petition for Review*, Docket, p. 12.
[63] Docket, pp. 10 to 18 (cf: Par. 1, *Petition for Review*, Docket, at p. 10).
[64] Exhibit "R-15", BIR Records, pp. 333 to 342.

the purpose of appealing before this Court an inaction over a disputed assessment. Consistent therewith, Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, likewise recognizes only one 180-day period, even when it has introduced the concept of an administrative appeal over an FDDA issued by respondent's duly authorized representative.

As a corollary, the filing of an administrative appeal before respondent ***does not give*** the concerned taxpayer a fresh 180-day period, despite the lapse of the original 180-day period. But in this case, *even assuming* that a fresh 180-day period is given by law for administrative appeals before respondent, the instant *Petition for Review* is still belatedly filed. Counting from the filing of petitioner's *Request for Reconsideration/Reinvestigation* before respondent on November 25, 2017,[65] the supposed another 180-day period ends on May 24, 2018. From this latter date, the supposed 30-day period to appeal ends on June 23, 2018. Considering that the instant *Petition for Review* was filed only on July 16, 2018,[66] the same is still definitely filed way beyond the appeal period as assumed.

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[65] Exhibit "P-11", Docket, pp. 284 to 289. Refer also to Par. 10, *Petition for Review*, Docket, p. 12.

[66] Docket, pp. 10 to 18 (cf: Par. 1, *Petition for Review*, Docket, at p. 10).

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice