Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1425** (CTA Case No. 8599)
- versus -	Present: DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *J.J.*
NEWSPAPER PARAPHERNALIA, INC., Respondent.	Promulgated: APR 21 2017 4:02 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review, under Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, filed by petitioner-Commissioner of Internal Revenue assailing the Decision dated October 19, 2015 (the "Assailed Decision") and the Resolution dated January 22, 2016 ("the Assailed Resolution"), both rendered by the Court of Tax Appeals (CTA)-Third Division.

Petitioner is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to cancel disputed internal revenue assessments, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent is a corporation duly organized and existing under Philippine laws with office address at the 2/F AMPI Building, Y. Ague

Street, corner Chino Roces Avenue, Barangay Tejeros, Makati City. It is engaged in the trading of newspaper supplies, other goods and merchandise on wholesale or retail.

The antecedent facts of the case, as narrated in the Assailed Decision, are as follow:

"Petitioner received BIR Letter Notice ('LN') No. 049-TRS-07-00-00019 dated July 1, 2009 and signed by the then CIR, informing petitioner of the discrepancies in Income Tax ('IT'), Value Added Tax ('VAT'), Percentage Tax, Withholding Tax on Compensation ('WTC'), Expanded Withholding Tax ('EWT'), and Final Withholding Tax ('FWT') for the calendar/fiscal year ending 2007, as follows:

AGENT-TAXPAYER RECONCILIATION

A. Gross Sales/Income Payment per Alphalists of payors to one & the same payee		781,190,896.80	
	VAT	**PERCENTAGE**	**INCOME TAX**
B. Gross sales/income/receipts per payee's returns filed	817,883,158.91	X	0.00
C. Discrepancy on gross sales/revenues/receipts (A-B)	0.00	0.00	781,190,896.80
D. Percentage (%) of discrepancy on sales/revenues/receipts (C/A)	0.00	0.00	100.00
E. Tax withheld per alphalists of all all payors			7,818,145.32
F. Tax withheld claimed per returns filed by the payee			8,495,906.00
G. Discrepancy on Taxes Withheld claimed by payee (F-E)			677,760.68

AGENT RECONCILIATION

	COMPENSATION	**EXPANDED**	**FINAL**
H. Total withholding tax due per annual alphalists	2,064,876.18	6,313,551.16	0.00
I. Total remittance per monthly/quarterly returns	2,162,712.34	6,313,551.16	343,400.00
J. Discrepancy on remittance (H-I)	97,836.16	0.00	0.00
K. Penalties for late filing/payment			
L. Non-compliance of year end adjustment	1,000.00		
M. Other withholding tax violations			
N. Discrepancy on total remittances	1,000.00	0.00	0.00

Petitioner received a Follow-Up Letter dated August 17, 2009, serving as the final notice to petitioner of the findings under LN No. 049-TRS-07-00-00019, giving it the last chance to settle the basic taxes — Value Added Tax ('VAT') and Income Tax ('IT') without corresponding interests and penalties.

On August 25, 2009, petitioner transmitted to the BIR a copy of BIR Payment Form (1601F), BIR Form 1702Q (1st to 3rd Quarters), BIR Form 1702, and BIR Form 2307, all for 2007.

On September 7, 2009, petitioner transmitted to the BIR a copy of BIR Form 2307, Summary of BIR Form 2307, and its Annual Income Tax Return and Financial Statements, all for 2007.

On September 28, 2009, petitioner paid its EWT deficiency amounting to Php240,096.14, inclusive of interest and compromise penalty. It likewise paid its IT deficiency amounting to Php103,409.20, inclusive of interest and compromise penalty.

On October 14, 2009, petitioner transmitted its sales reconciliation with schedule.

On May 28, 2010, petitioner received Letter of Authority ('LOA') No. 2009 00017059 dated April 30, 2010, authorizing Revenue Officer Elisa F. Guilalas ('RO Guilalas') of the Letter Notice Task Force ('LNTF') — National Office, to examine petitioner's books of accounts and other accounting records for 'IT, VAT & WT issues based per LN No. 049-TRS-07-00-00019 and the corresponding preprocessed data under RELIEF', relating to taxable year 2007. Attached to the said LOA is a Notice of Informal Conference ('NIC') requesting it to appear for an informal conference.

In a letter dated November 3, 2010 and received on November 4, 2010, addressed to RDO No. 49 through RO Guilalas, petitioner requested for an appointment regarding the result of the examination.

On July 17, 2011, petitioner received a Preliminary Assessment Notice ('PAN') dated May 4, 2011, informing petitioner that it has deficiency VAT in the amount of Php600,926.36, and IT in the amount of Php237,003.81 for taxable year 2007, as follows:

I. DEFICIENCY VALUE ADDED TAX

Discrepancy per Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by VAT Rate		12%
Deficiency VAT		342,141.25
Add: 20% interest p.a. up to (5/30/2011)		233,785.11
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE	P	601,926.36

II. DEFICIENCY INCOME TAX

Discrepancy per Audit/Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by Gross Profit Rate***		9%
Additional Gross Income	P	256,605.94
Add: Net Taxable Income per Annual ITR filed		19,250,457.00
Total Taxable Income	P	19,507,062.94
Multiply by Normal Income Tax Rate		35%
Adjusted Income Tax Due	P	6,827,472.03
Less: Income Tax due per ITR		6,737,660.00
Basic Deficiency Income Tax	P	89,812.03
Add/(Less): Discrepancy on Amount of Tax Withheld Claimed by Payee		45,499.19
Total/Net Deficiency Income Tax	P	135,311.22
Add: 20% interest p.a. up to (5/30/2011)		85,692.59
Compromise Penalty		16,000.00
TOTAL AMOUNT DUE	**P**	**237,003.81**

* Please note that the interest and the total amount due will have to be adjusted if paid beyond May 30, 2011.

On September 22, 2011, petitioner received a Final Assessment Notice ('FAN') with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050, all dated June 6, 2011, informing petitioner of its deficiencies in VAT and IT for taxable year 2007 in the amount of Php601,859.39 and Php238,132.85, respectively, both inclusive of compromise penalty and interest, with no due dates. Details of the FAN are as follows:

I. DEFICIENCY VALUE ADDED TAX

Discrepancy per Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by VAT Rate		12%
Deficiency VAT		342,141.25
Add: 20% interest p.a. up to (6/30/2011)		234,718.14
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE	P	601,859.39

II. DEFICIENCY INCOME TAX

Discrepancy per Audit/Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by Gross Profit Rate***		9%
Additional Gross Income	P	256,605.94
Add: Net Taxable Income per Annual ITR filed		19,250,457.00
Total Taxable Income	P	19,507,062.94
Multiply by Normal Income Tax Rate		35%
Adjusted Income Tax Due	P	6,827,472.03
Less: Income Tax due per ITR		6,737,660.00
Basic Deficiency Income Tax	P	89,812.03
Add/(Less): Discrepancy on Amount of Tax Withheld Claimed by Payee		45,499.19
Total/Net Deficiency Income Tax	P	135,311.22
Add: 20% interest p.a. up to (6/30/2011)		86,821.63
Compromise Penalty		16,000.00
TOTAL AMOUNT DUE	**P**	**238,132.85**

* Please note that the interest and the total amount due will have to be adjusted if paid beyond June 30, 2011.

On September 26, 2012, petitioner filed its Letter Protest to the FAN, on the ground that the assessment for deficiency VAT and IT for CY 2007 has prescribed.

On October 22, 2012, respondent issued its Final Decision on Disputed Assessment ('FDDA') informing petitioner that it considered the protest void and without force and effect due to its failure to state the facts, the applicable law, rules and regulations, or jurisprudence on which the protest is based, pursuant to Section 3.1.5 of Revenue Regulations ('R.R.') No. 12-99. Likewise, respondent stated that the assessment has become final, executory and demandable due to petitioner's failure to file a valid protest against the FLD and assessment notice within thirty (30) days from date of receipt thereof.

On December 17, 2012, petitioner filed, by registered mail, the instant Petition for Review.

On February 8, 2013, respondent filed, by registered mail, a Motion for Extension of Time to File an Answer. On March 13, 2013 and through registered mail, respondent filed her Answer (with Motion to Dismiss), raising the following Special and Affirmative Defenses/Grounds for the Dismissal of the Petition for Review:

17. She reiterates, restates, and repleads the preceding paragraphs of the Answer as part of her Special and Affirmative Defenses.

18. Petitioner's claim for cancellation of assessment against it in the instant Petition for Review has no basis in fact and in law and being mere options, for the following reasons:

18.1. On the question of the assessment of Deficiency Income Tax, along with Deficiency Value-Added Tax. Per verification made by the BIR, it was disclosed that there were discrepancies resulting from the Reconciliation of Listing for Enforcement ('RELIEF') and Third Party Matching-BOC & TRS Data Program as declared by petitioner in its tax returns, thus, it was assessed in accordance with Revenue Memorandum Order ('RMO') No. 17-2009 and Sections 31, 32, 106 and 109 of the National Internal Revenue Code of 1997, as amended ('Tax Code'). The resulting finding is shown:

A. Undeclared Sales

TRINITAS PUBLISHING, INC.	P832,701.91
KAGITINGAN PRTG PRESS, INC.	249,113.00
KAMAHALAN PUBL CORP	31,362.00
THE HOUSE PRINTERS CORP	321.43
LEXMEDIA DIGITAL CORP	1,737,678.77
Discrepancy on Gross Sales Revenues/Receipts	**P2,851,177.11**

18.2. Petitioner's burden to show its entitlement to its claim. In a catena of cases, the Honorable Supreme Court has laid down the rule that in tax cases, **all presumptions are in favour of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken**

into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law. As a logical outgrowth of the presumption in favour of the validity of assessments, **when such assessments are assailed, the burden of proof is upon the taxpayer to clearly show that the assessment is erroneous, in order to relieve himself from it**.

18.3. Considering that there was no evidence introduced by petitioner so as to corroborate its allegations and overthrow the validity of the assessments as stated in the Final Decision on Disputed Assessment ('FDDA'), and worse, it failed to properly and timely interpose an appeal of the assessment within thirty (30) days from receipt of the assessment notice, suffice it to state that petitioner's case has no merit and cannot be given even the smallest of consideration.

19. No evidence was submitted by the petitioner to disprove such findings by the Respondent. Thus, **the assailed assessments are to be presumed correct**. As held by the Honorable Supreme Court in one case:

> 'The Commissioner of Internal Revenue, sustained by the Tax Court, found for a fact that the expenses in the amount of P206,870.00 are fictitious. **Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayers to rebut such presumption** (Perez vs. Court of Tax Appeals, et al., L-10507, May 30, 1958). **Tan Guan failed to overcome his burden. Hence, the finding that the expenses cannot be claimed as deduction from gross income**.' (Emphases and Underlining provided)

20. Indeed, mere allegations will never suffice to overthrow the presumption in favour of taxation. **Only**

evidence presented to substantiate errors in assessment will be given merit. As held by the Honorable Supreme Court in one case:

> **Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessment** for the years 1948, 1949 and 1950, **the trial court had no other alternative than to resort to the legal truism that 'all presumptions are in favor of the correctness of tax assessments'. The burden of proof is on the taxpayer to show the contrary**. This the company failed to do. This action finds support in the following authorities:
>
> > **'All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law**.
> >
> > **'As a logical outgrowth of the presumption in favor of the validity of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it**.' (51 Am. Jur. Pages 620-621)' (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil., 290; Off. Gaz [2] 791.)

> 'When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, **the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention**.' (Behn, Meyer & Co. vs. Collector of Customs, 26 Phil., 647)
>
> **'That the determination of the tax deficiency by the Government has prima facie validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct**.' (Perez vs. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958).'

21. Petitioner cannot question the assessments made against it for all presumptions are **in favour of tax assessments** (**Interprovincial Autobus Co., Inc. vs. Collector [98 Phil. 290]; Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner, [G.R. No. 81446, Aug. 18, 1998]**).

22. It must be stressed that remedies afforded a person under the law must be complied strictly for the effective and valid invocation of such remedies. In this case, petitioner was remiss, in that contrary to petitioner's stance that **the instant Petition for Review** is seasonably made, **it is in truth and in fact belatedly made, making the assessment final, executory, and demandable; thus, the Honorable Court of Tax Appeals has no jurisdiction, considering that petitioner failed to perfect its appeal in the manner and within the period mandatorily laid down by law.**

23. The petitioner, as it has judicially admitted in its Petition for Review, received the FDDA on **22 October 2012**, informing it that petitioner's protest is denied. Petitioner attempts to assail said assessment

under the FDDA, which is admittedly allowed under the law. As provided for by Section 228 of the Tax Code:

> "**SECTION 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: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital

equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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." (Emphases and underlining all provided)

24. However, as provided for by the law, **only thirty (30) days from receipt of the final decision is allowed for the petitioner to protest the said final decision with the Court of Tax Appeals, otherwise, the final decision shall become final, executory, and demandable.**

25. Republic Act No. 1125, otherwise known as the CTA Law, as amended ('CTA Law'), provides that:

> '**SECTION 11**. *Who may Appeal; Mode of Appeal; Effect of Appeal.* — **<u>Any party adversely affected by a decision, ruling</u>** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Regional Trial Courts **<u>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</u>** as referred to in Section 7(a)(2) herein. x x x.' **(Emphases and underlining all provided)**

26. In relation to the abovesaid provision, the CTA Rules provides that:

> Rule 8
> PROCEDURE IN CIVIL CASES
>
> xxx xxx xxx
>
> **SEC. 3. Who may appeal; period to file petition.** — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed **<u>within thirty days</u>** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x x x x

27. The CTA Rules enunciates that *the Rules of Court in the Philippines shall apply suppletorily to these*

Rules (Rule 1, Sec. 3, CTA Rules). Now, Rule 50, Sec. 1 of the Revised Rules of Court of the Philippines provides that:

RULE 50
DISMISSAL OF APPEAL

> **SECTION 1.**<u>**Grounds for dismissal of appeal**</u>. — <u>**An appeal may be dismissed**</u> by the Court of Appeals, on its own motion or on that of the appellee, on the following ground:
>
> (a) <u>**Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules**</u>;
>
> xxx xxx xxx
>
> (i) <u>***The fact that the order or judgment appealed from is not appealable***</u>. **(Emphases and underlining all provided)**

28. A reading of the instant *Petition for Review* will show that the same was filed only on the **8th day of January, 2013**. If the filing date will be counted from 22 October, 2012, the date of receipt of the FDDA, it will be seen that <u>**seventy-seven (77) days has** *(sic)* **lapsed from said date within which to make the appropriate judicial appeal, which means that the Petition for Review is belatedly made, belying petitioner's allegation that the instant case is seasonably made**</u>. Thus, applying the provisions of the rules and the law in the instant petition, only the <u>**DISMISSAL OF THE CASE**</u> will be the necessary result, for <u>**the petitioner has no cause of action**</u> against the herein respondent, <u>**and for failure of the petitioner to show that the instant petition is in truth and in fact taken within the period provided for by law and the assessment being no longer appealable for being final, executory, and demandable**</u>.

29. The Honorable Supreme Court is emphatic on the assessment being unquestionable for failure to

make the timely protest by way of an appeal, as it clearly spoke in this wise:

> 'Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, **for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling**. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.
>
> **To be sure, the fact that an assessment has become FINAL for failure of the taxpayer to file a protest within the time allowed only means that *THE VALIDITY OR CORRECTNESS OF THE ASSESSMENT MAY NO LONGER BE QUESTIONED ON APPEAL***. xxx' (Emphases and underlining all provided)

30. The Honorable Supreme Court ruled that the taxpayer's failure to appeal **deprived him of the right to question the Commissioner's authority to collect the tax within the prescriptive period provided by law. The taxpayer's failure to appeal in due time makes the assessment final, executory and demandable. Thus, petitioner is now barred from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits**.

31. **Appeal is not a natural right or a part of due process** but a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law granting the right. As a purely statutory right, **it is not an inherent right; it is not also a necessary element of due process of law.**

32. The fundamental nature of appeal as a mere statutory right requires the party seeking to avail himself of the right to **faithfully comply with the rules granting and providing for it**. **Appeal is a privilege** established by the positive laws which prescribe the cases where appeal may be taken, the procedure to be followed, the courts from which appeal is taken, and the courts by which the appeal shall be proceeded with and decided. As such, **a plea to liberalize or relax the rules on appeal is, as a general rule, not favoured**.

33. Time and again it has been held that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. **Failing to do so, the right to appeal is lost. Since the perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, the failure to perfect his appeal rendered the questioned decision final and executory**. The rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised in accordance with the provisions of the law.

34. **A taxpayer who had lost his right to dispute the validity of an assessment by failing to appeal to the Court of Tax Appeals within the thirty (30) day period makes the assessment in question final, executory, and demandable. He is already barred in a subsequent proceeding from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits.** Otherwise, the period of thirty (30) days for appeal to the Court of Tax Appeals would make little sense.

35. Finally, **allegations of prescription by the taxpayer must be clearly shown. Since prescription is one of the affirmative defences of the taxpayer, it is incumbent upon him to**

> **positively establish when the prescriptive period started to run and when the same ended.**
>
> 36. Thus, applying the pertinent provisions of the law, rules, and jurisprudence on the matter at hand, it is crystal clear **that the instant Petition for Review lacks basis and merit, and should be dismissed outright** by this Honorable Court. Consequently, **petitioner should already be made to pay the deficient taxes for the same are already final, executory, and demandable under the facts and the law.**

On April 10, 2013, the case was transferred from the Third Division to the Second Division, pursuant to CTA Administrative Circular No. 01-2013, dated March 26, 2013.

On April 11, 2013, petitioner filed its Comment/Opposition (Re: Motion to Dismiss by Respondent dated 13 March 2013).

On May 10, 2013, the Court issued a Resolution denying respondent's Motion to Dismiss.

On June 5, 2013, the case was transferred back to the Third Division, pursuant to Section 5, Rule V, Internal Rules of the Court of Tax Appeals.

On August 12, 2013 and by registered mail, the parties, through their respective counsels, filed their Joint Motion to Approve Stipulation of Facts and Issues.

On August 29, 2013, a Pre-trial Order was issued by the Court terminating pre-trial and setting the date/s for the presentation of evidence by the parties.

On October 2, 2013, respondent filed a second Motion to Dismiss, which was denied by the Court in its Resolution dated November 22, 2013.

On December 13, 2013, respondent filed a Motion for Reconsideration by registered mail, which was denied by the Court in its Resolution dated February 17, 2014.

During trial, petitioner presented the Judicial Affidavits ('JA') of the following witnesses: (1) Ms. Rhodora D. Roco, Docket Clerk of Gerodias Suchianco Estrella Law Firm; (2) Ms. Cristina D. Acebedo, Business Advisor, Tax Compliance and Billing Section, Print Town Group of Companies, and (3) Ms. Yvette V. Castillo, Assistant Vice President for Finance, Print Town Group of Companies.

On April 15, 2014, petitioner filed its Formal Offer of Evidence.

On June 17, 2014, the Court issued a Resolution admitting Exhibits 'P-1' to 'P-3-1', 'P-6' to 'P-28', 'P-29' to 'P-43', and denying 'P-4' to 'P-5-1', and 'P-28-1'.

During trial, respondent presented the JA of RO Elisa F. Guilalas in lieu of her direct testimony.

On August 11, 2014, respondent filed her Formal Offer of Evidence by registered mail.

On September 10, 2014, the Court issued a Resolution admitting *Exhibits* 'R-1', 'R-1-a', 'R-1-b', 'R-1-c', 'R-2', 'R-2-a', 'R-3', 'R-3-a', 'R-3-b', 'R-4', 'R-5', 'R-6', 'R-6-a', 'R-7', 'R-7-a', 'R-7-b', 'R-8', 'R-9', 'R-9-a', 'R-9-b', 'R-10', 'R-11', 'R-12', 'R-13', 'R-14', 'R-14-a', 'R-15', and 'R-15-a.'

On November 7, 2014, the Court resolved to submit the case for decision, taking into consideration the Memorandum filed by petitioner on October 17, 2014 and the Records Verification Report of the Judicial Records Division dated October 20, 2014, stating that no memorandum was filed by respondent."

On October 19, 2015, the CTA-Third Division rendered the Assailed Decision[1] granting petitioner's (now respondent) Petition for

[1] Division Docket (Vol. II), pp. 585-610.

Review and cancelling and withdrawing Final Assessment Notice with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050, all dated June 6, 2011, due to prescription.

On November 11, 2015, petitioner filed, thru registered mail, a Motion for Reconsideration[2] which the CTA-Third Division denied in its Resolution[3] promulgated on January 22, 2016, for lack of merit. The resolution, likewise, affirmed and upheld the Assailed Decision.

On February 11, 2016, the instant Petition for Review was filed by petitioner with the Court *En Banc*, with respondent's Comment/Opposition (To Petitioner's Petition for Review dated 11 February 2016) filed, thru registered mail, on April 19, 2016.

In a Resolution[4] promulgated on May 24, 2016, the Court *En Banc* resolved to give due course to the Petition for Review and, likewise, required the parties to submit their Memoranda within a period of thirty (30) days from receipt of the Resolution. After the lapse of the given period, the Court *En Banc* will consider the Petition for Review submitted for decision with or without such Memoranda.

On June 7, 2016, petitioner filed, thru registered mail, a Manifestation (In Lieu of Submission of Memorandum) stating that he is adopting all his pleadings filed in this case, including the Judicial Affidavits of his witnesses, *sans* Memorandum, which the Court *En Banc* noted per Minute Resolution[5] dated June 27, 2016.

Respondent filed its Memorandum thru registered mail on June 30, 2016.

The case was deemed submitted for decision on July 26, 2016 per Resolution[6] of the same date.

Hence, this Decision.

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[2] Ibid, pp. 611-615.
[3] Id., pp. 628-631.
[4] En Banc Docket, p. 73-74.
[5] Ibid, p. 78.
[6] Id., p. 100-101.

Petitioner, in his Petition for Review, contends that respondent filed its protest beyond the period required by Section 228 of the 1997 Tax Code, thus, making the assessment final, executory and unappealable to the CTA-*En Banc*. That, contrary to the findings of the CTA-Third Division, lack of jurisdiction over the subject matter is one of the exceptions under the Omnibus Motion Rule (Section 8, Rule 15 of the 1997 Rules of Court).

Petitioner further contends that since respondent's tax returns were false returns, hence, the 10-year prescriptive period under Section 222(a) of the 1997 Tax Code shall apply in the instant case.

Respondent, for its part, in its Comment/Opposition (To Petitioner's Petition for Review dated 11 February 2016), counters that petitioner's assessment against respondent did not become final and executory for being a void assessment; that, petitioner's claim of lack of jurisdiction has no basis as the assessment was in itself void; and, that the 10-year prescriptive period, in case of a false or fraudulent return with intent to evade tax or of failure to file a return, does not apply in the instant case.

After a careful and thorough evaluation and consideration of the arguments presented by both parties, as well as the records of the case, the Court *En Banc* finds no merit in the Petition for Review.

In the Assailed Decision, the CTA-Third Division granted respondent's Petition for Review and cancelled and withdrew Final Assessment Notice with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050, all dated June 6, 2011, assessing respondent for deficiency income tax and value-added tax amounting to Php238,132.85 and Php601,859.39, respectively, due to prescription.

In cases of assessment of internal revenue taxes, We agree with the Court in Division that the applicable provision under the 1997 Tax Code, as amended, is Section 203 which provides that:

> "Section 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration

> of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Clearly, from the foregoing, the three (3)-year period to assess internal revenue taxes commences from the date of actual filing of the return or from the last day prescribed by law for the filing of such return whichever comes later. Thus, if the return was filed earlier than the last day allowed by law, the period to assess shall be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

The instant Petition for Review involves the assessment issued by petitioner against respondent for alleged deficiency income tax and deficiency VAT for taxable year 2007.

As regards respondent's income tax, the return is required to be filed and the payment is to be made on or before the 15th day of April. Respondent's Amended Income Tax Return for taxable year 2007 was filed on July 10, 2008. Hence, counting from July 10, 2008, the date of actual filing of respondent's Amended Annual Income Tax Return, petitioner had until July 10, 2011 within which to assess respondent for deficiency income tax for taxable year 2007.

On the other hand, the law requires that the VAT Return must be filed quarterly within 25 days following the close of each taxable quarter prescribed for each taxpayer.

Records reveal that respondent filed its Quarterly VAT Returns covering all the four (4) quarters of taxable year 2007 on March 7, 2008, July 25, 2007, October 25, 2007 and January 25, 2008, respectively. Hence, petitioner had until April 25, 2010, July 25, 2010, October 25, 2010 and January 25, 2011 within which to assess respondent for deficiency VAT for the four (4) quarters of 2007. But, since the FAN, while dated June 6, 2011, was sent only on September 20, 2011 and actually received by respondent on September 22, 2011, clearly, the assessment was issued beyond the 3-year prescriptive period and, therefore, had already prescribed.

Reiterating the ruling of the Supreme Court in the *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*[7], We, again, quote said Supreme Court decision which was quoted in the Assailed Decision, viz:

> "xxx. In the case of Collector of Internal Revenue v. Bautista, this Court held that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within the said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent. (Underscoring ours)

Thus, pursuant to the above Supreme Court ruling, We affirm the following conclusion reached by the CTA-Third Division, in the Assailed Decision, to wit:

> "While respondent issued the FAN with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050 on June 6, 2011, the same was sent by registered mail <u>only on September 20, 2011</u>, and was actually received by petitioner on September 22, 2011.
>
> Since assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer, September 20, 2011 shall be considered as the date of assessment. Looking into the last dates to assess on the table above, respondent's right to assess all the foregoing taxes had already prescribed."

Going now to the other issue presented by petitioner in the instant Petition for Review, i.e., the Court's lack of jurisdiction over the subject matter, We find that the same had already been properly resolved by the CTA-Second Division in its Resolution dated May 10, 2013, in this wise:

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[7] G.R. No. 157064, August 7, 2006

"Section 228 of the NIRC provides that '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 <u>within thirty (30) days from receipt of said decision</u>, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable.'

The 30-day period is likewise provided under Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

From a reading of the Petition for Review, it is clear that petitioner alleges that the FDDA was received on November 15, 2012, not October 22, 2012 as mistakenly pointed out by respondent. The petitioner merely described the FDDA as 'dated 22 October 2012' but did not state that it received the FDDA on such date. We note that the FDDA does not contain any signature acknowledging receipt of the same or any date indicating when it was actually received by petitioner.

Counting thirty (30) days from November 15, 2012, petitioner had until December 15, 2012 to file its Petition for Review, which date falls on a Saturday. Hence, petitioner had until December 17, 2012 to file its Petition in accordance with Rule 22, Section 1 of the Rules of Court which allows filing of the petition on the next working day.

Records clearly show that petitioner filed the instant Petition on December 17, 2012 by registered mail and received by this Court on January 8, 2013. Pursuant to Rule 13, Section 3 of the Rules of Court, which apply suppletorily, the date as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of filing in court. Accordingly, the instant petition was considered filed on December 17, 2012.

In view of the foregoing and considering that the Petition for Review contains allegations showing the jurisdiction of this Court, as required by Rule 6, Section 2 of the Revised Rules of the CTA, as amended, We find no merit in the instant motion."

Anent the last issue raised by petitioner that, since respondent's tax returns were false returns, the 10-year prescriptive period under Section 222(a) of the 1997 Tax Code, as amended, shall apply in the instant case, We agree and affirm the disposition of the same by the CTA-Third Division in the Assailed Resolution, as follows:

> "It is worthy to note that this is the first time respondent has raised the argument that petitioner filed a false return. A false return implies deviation from the truth, whether intentional or not. There was no mention of respondent's findings that petitioner filed a false return in her Answer, nor was it mentioned by her lone witness in her Judicial Affidavit. Moreover, it was never mentioned in the preliminary assessment notice or in the FAN, as well as in the details of discrepancy attached thereto. Due process dictates that the taxpayer must be informed of the facts and the law upon which the assessment is made. Furthermore, respondent did not present any evidence to substantiate its claim that petitioner filed a false return, neither did it impose the penalty of fifty percent (50%) of the tax or of the deficiency tax, pursuant to Section 248(B) of the 1997 National Internal Revenue Code ('NIRC'). These circumstances, taken together, can only lead the Court to conclude that the argument raised by respondent in her Motion for Reconsideration is a mere afterthought, and thus, deserves scant consideration.
>
> Our tax laws provide for a period within which the government can exercise its right to assess taxpayer for any deficiency tax. Under Section 203 of the 1997 NIRC, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes, primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to indefinitely extend the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.
>
> Thus, for failing to convince the Court that petitioner filed a false tax return, the Court finds the application of the

exceptions provided for under Section 222 of the 1997 NIRC, unavailing in the instant case."

All told, We find no cogent reason to disturb or reverse the findings and conclusions of the CTA-Third Division in the Assailed Decision and Assailed Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Assailed Decision dated October 19, 2015 and the Assailed Resolution dated January 22, 2016, both rendered by the CTA-Third Division, are both hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1425** (CTA Case No. 8599)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
NEWSPAPER PARAPHERNALIA, INC., *Respondent.*	Promulgated: APR 21 2017 4:02 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) thereby affirming the assailed Decision dated October 19, 2015 and the assailed Resolution dated January 22, 2016 of the Court in Division.

As correctly elucidated in the *ponencia*, the Final Assessment Notice (FAN) issued against Newspaper Paraphernalia, Inc. (NPI) is void *ab initio* for having been issued by the CIR beyond the three-year prescriptive period to assess deficiency taxes under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended,[1]

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[1] SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three

and as such, it could not attain finality, notwithstanding NPI's failure to timely protest the same.

The ten-year prescriptive period to assess NPI for deficiency taxes does not apply in this case

Pursuant to Section 203 of the NIRC of 1997, as amended, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. Here, records reveal that the FAN, assessing NPI for deficiency income tax and value-added tax (VAT) for the taxable year 2007, was issued beyond the three-year period counted from the dates of filing of NPI's income tax return and quarterly VAT returns.[2]

In his Motion for Reconsideration of the assailed Decision and as well as in the present Petition for Review, the CIR insists that the FAN was timely issued. According to the CIR, it is the ten-year prescriptive period to assess NPI for deficiency taxes that applies in this case as the tax returns filed by NPI are false returns.

Under Section 222 of the NIRC of 1997, as amended, an assessment notice may be issued after the lapse of the three-year prescriptive period, provided that any of instances enumerated

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years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

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Return	Deadline for Filing	Date of Filing	Last Day to Assess	Date of Issuance of FAN
Amended 2007 Income Tax Return	April 15, 2008	July 10, 2008	July 10, 2011	September 22, 2011
3rd Amended Quarterly VAT Return for the 1st Quarter	April 25, 2007	March 7, 2008	March 8, 2011	
2nd Quarter VAT Return	July 25, 2007	July 25, 2007	July 25, 2010	
3rd Quarter VAT Return	October 25, 2007	October 25, 2007	October 25, 2010	
4th Quarter VAT Return	January 25, 2008	January 25, 2008	January 25, 2011	

therein are present. Section 222(a) of the NIRC of 1997, as amended, states that if a taxpayer files a false or fraudulent return with intent to evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity or fraud.

A careful review of the records reveal **that there is nothing therein that would prove that NPI filed false return with intent to evade tax** for which reason - - there is no basis to apply the ten-year prescriptive period under Section 222 (a) of the NIRC of 1997, as amended. Besides, even assuming that there was falsity in the returns filed by NPI, the same does not *ipso facto* warrant the application of the ten-year prescriptive period to assess. On this point, I am constrained to re-state may view in *McDonald's Philippines Realty Corporation vs. Commissioner of Internal Revenue*[3] *and Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation*[4] anent the application of the ten-year prescriptive period to assess in case of false returns:

> "With due respect, I agree with the position taken by our learned colleague, Associate Justice Catherine T. Manahan, that **the ten-year prescriptive period to assess deficiency taxes** under Section 222 (a) of the National Internal Revenue Code (NIRC) of 1997, as amended, **should not be applied in all cases involving false returns**.
>
> As eloquently stated by Associated Justice Manahan in her Dissenting Opinion, the definition of a false return in ***Aznar vs. Court of Tax Appeals***[5] should be revisited in light of the Supreme Court's pronouncement in ***Commissioner of Internal Revenue vs. B.F. Goodrich Phils. Inc.***[6] wherein the Supreme Court did not consider mere deviation from truth as sufficient justification to consider the return as false for purposes of applying the ten-year prescriptive period to assess.
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> In this regard, I quote hereunder the position I have taken in ***Visayas Geothermal Company vs.***

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[3] CTA EB No. 1283, February 9, 2017.
[4] CTA EB No. 1284, February 9, 2017.
[5] G.R. No. L-20569, August 23, 1974.
[6] G.R. No. 104171, February 24, 1999.

Commissioner of Internal Revenue regarding the application of the ten-year prescriptive period to assess in case of false returns, *viz.*:

"By way of obiter, however, I wish to state my humble view that in cases of false returns with no intent to evade tax, **but due only to plain oversight, negligence or mistake**, the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, should apply.

In this regard, I respectfully submit that the doctrine laid down in the *Aznar case* must be revisited in order to come up with a proper interpretation and application of the said provision, specifically, on the applicability of the ten-year prescriptive period in cases where the taxpayer's return is found to be false. It must be stressed that a careful application of Section 222 of the NIRC of 1997, as amended, is important to safeguard the rights of the taxpayers against the limitless taxing power of the government.

Section 222 of the NIRC of 1997, as amended, originated from Section 332 (a) of the NIRC of 1939, which was lifted from Section 276 (a) of the Internal Revenue Code of 1939 of the United States of America. When Presidential Decree No. 1158 was enacted into law, Section 332 (a) of the NIRC of 1939 was adopted as Section 223 (a) of the NIRC of 1977, as follows:

> 'Sec. 223.Exceptions as to period of limitation of assessment and collection of taxes. — (a) In the case of false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within the ten years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of the civil or criminal action for the collection thereof.'

With the enactment of Republic Act No. 8424, otherwise known as National Internal Revenue Code of 1997, Section 222 (a) restated Section 223 (a) of the NIRC of 1977, as follows:

> 'Sec. 222.Exceptions as to period of limitation of assessment and collection of taxes. — (a) In the case of false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within the ten years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.'

After a careful reading of the afore-cited Section 222 of the NIRC of 1997, as amended, I am of the opinion that the phrase 'with intent to evade tax' does not only apply to cases of fraudulent returns, but also to cases of false returns. This is evident by the fact that **no comma** was placed between the words *'[i]n the case of false*' and the words '*or fraudulent return with intent to evade tax*'. This clearly shows that the phrase *'with intent to evade tax*' modifies not only the words '*fraudulent return*' but also the word '*false*'.

Moreover, American jurisprudence on the matter, although merely persuasive as sizeable portion of the Philippine Tax Code is lifted from the United States Internal Revenue Code, is instructive:

1) **It is not sufficient that the return filed be false if, in fact, there exists no intent to evade any tax**. Thus, the mere fact that the inadequacy of the taxpayer's bookkeeping system causes a false return to be filed does not prevent the running of the statute where no concealment of any kind has been attempted and falsity has not knowingly been indulged in to evade the tax; and,

2) It has been held [that] where the taxpayer made no disclosure of a transaction on which he made a profit, his return was false with intent to evade the tax and that such tax could be assessed after the expiration of the usual period of limitation.

Indubitably, the filing of a false return must be coupled with intent to evade tax in order for the usual period of limitation not to apply. Applying this to Section 222 of the NIRC of 1997, as amended, a false return must have been made with intent to evade tax

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in order for the ten (10)-year prescriptive period to apply.

The application of the ten-year prescriptive period to assess even to situations involving false tax returns, without intent to evade tax on the part of the taxpayer, would render lifeless the three-year prescriptive period to assess under Section 203 of the NIRC of 1997, as amended, for practically all deficiency tax assessments involve entries in the return that are necessarily false. It will result in an absurd situation wherein the ten-year prescriptive period will be the usual period of limitation instead of the three-year prescriptive period. Such application will run counter to the Supreme Court's categorical pronouncement in **Republic of the Philippines v. Ablaza**, *viz.*:

> 'The law on prescription being a remedial measure should be **interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer** within the contemplation of the Commission which recommend[ed] the approval of the law.' (Emphasis supplied)" (Citations omitted)

An assessment issued beyond the prescriptive period to assess, being void *ab initio*, could not attain finality

In *Protector's Services, Inc. vs. Court of Appeals*,[7] the Supreme Court upheld the dismissal by the Court of Tax Appeals (CTA) of the taxpayer's appeal for lack of jurisdiction after noting that the latter failed to file a timely protest against the assessment notices and clarified the consequence of a taxpayer's failure to timely protest an assessment:

> "We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. **From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction**." (Boldfacing supplied)

[7] G.R. No. 118176, April 12, 2000.

Clearly, with respect to assessments which became final for failure to file a timely protest, **the rule is that the validity or correctness of assessment may no longer be questioned on appeal**.

An assessment, however, **may neither attain finality nor be the subject of a lawful execution in situations where such assessment was issued without authority, such as when the CIR's right to assess has prescribed, or when there is a violation of the taxpayer's right to due process**. Thus, in *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*,[8] the Supreme Court emphasized that a void assessment bears no fruit.

Here, the FAN issued against NPI, having been issued beyond the three-year prescriptive period for the CIR to assess NPI for deficiency income tax and VAT, is void *ab initio* and without legal effect. Notwithstanding NPI's failure to protest the **void FAN** within thirty (30) days from receipt thereof, **it has not attained finality and it does not give rise to an enforceable tax liability against NPI**.

All told, I VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] G.R. No. 185371, December 8, 2010.