REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

UPSI PROPERTY HOLDINGS, INC., Petitioner,	**CTA EB No. 1968** (CTA Case No. 8860)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 19 2019 2:53 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed on November 21, 2018 by UPSI Property Holdings, Inc., petitioner, against the Commissioner of Internal Revenue, respondent,[1] praying to reverse and set aside of the Decision dated August 22, 2018[2] and Resolution dated October 30, 2018[3], rendered by the Court in Division of this Court in CTA Case No. 8860, entitled *"UPSI*

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[1] EB Docket, pp. 1 to 46.

[2] EB Docket, pp. 52 to 73; Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castañeda and Associate Justice Caesar A. Casanova (retired) of the former Second Division of the Court of Tax Appeals (CTA).

[3] EB Docket, pp. 74 to 86; Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castañeda of the Special Second Division of this Court.

Property Holdings, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent". The dispositive portions thereof respectively read:

Decision dated August 22, 2018:

"**WHEREFORE,** in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED."

Resolution dated October 30, 2018:

"**WHEREFORE**, premises considered, petitioner's *Motion for Reconsideration (of the Decision dated 22 August 2018)* is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner UPSI Property Holdings, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of developing and leasing of real property.

On the other hand, respondent Commissioner of Internal Revenue is duly appointed to exercise the powers and perform the duties of his office including, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

For taxable year ended March 31, 2009, petitioner duly filed its *Annual Income Tax Return* (BIR Form No. 1702).

Petitioner received the *Letter of Authority* (LOA) dated August 9, 2011 (ref: SN: eLA201000045120; LOA-034-2011-00000182), issued by Alfredo V. Misajon, Regional Director of Revenue Region No. 6 - Manila, to examine petitioner's books of accounts and other accounting records, for all internal revenue taxes for the period from April 1, 2008 to March 31, 2009.

Thereafter petitioner received a *First Request for Presentation of Records* dated August 10, 2011, issued by Petronilo C. Fernando, Revenue District Officer of Revenue District Office No. 34 – Paco/Pandacan/Sta. Ana/San Andres, Revenue Region No. 6 – Manila, pursuant to the said LOA, directing petitioner to submit its books of accounts and other related accounting records, in coordination with Revenue Officer (RO), Divina S. Santos.

Petitioner further received the *Preliminary Assessment Notice* (PAN) dated June 26, 2012, issued by Simplicio A. Madulara, OIC-Regional Director of Revenue Region No. 6 – Manila. In the said PAN, the BIR assesses petitioner with: (1) deficiency income tax amounting to ₱141,704,789.03, including interest up to June 30, 2012, and compromise penalty, and (2) fringe benefit tax amounting to ₱1,509,040.88, including surcharge, interest up to June 30, 2012, and compromise penalty, or for an aggregate amount of ₱143,213,829.91, for fiscal year ended March 31, 2009.

Subsequently, petitioner received the following communications, all dated July 13, 2012, issued by Simplicio A. Madulara, OIC-Regional Director of Revenue Region No. 6 – Manila:

a. *Formal Letter of Demand* (FLD) for deficiency taxes involving: a) deficiency income tax; b) deficiency fringe benefit tax;

b. Assessment No. 34-FY033109-IT-3526, for the amount of:

Particular	Amount
1. Tax Due	₱ 88,995,909.43
2. Add: Surcharge (25%) Interest (up to 7-15-12)	₱ 53,397,545.66
Suggested Compromise	
3. Total Amount Due	₱ 142,393,455.09

c. Assessment No. 34-FY033109-FBT-3527, for the amount of:

Particular	Amount
1. Tax Due	₱ 785,147.74
2. Add: Surcharge (25%)	₱ 196,286.94
Interest (up to 7-15-12)	₱ 513,276.14
Suggested Compromise	
3. Total Amount Due	₱ 1,494,710.82

d. FLD for compromise penalty on income tax in the amount of ₱50,000.00; and

e. FLD for compromise penalty on fringe benefit tax in the amount of ₱20,000.00.

In said FLD for deficiency taxes involving the alleged: (a) deficiency income tax; and (b) deficiency fringe benefit tax, the BIR reiterated its findings in the PAN, with interest adjusted until 15 July 2012, or for an aggregate amount of ₱143,888,165.91.

On September 14, 2012, UPSI filed its *Protest* to the FLD.

Respondent, thru Regional Director (RD) Araceli L. Francisco, issued and caused the service to petitioner of the *Final Decision on Disputed Assessment* (FDDA) dated June 18 2014, which was duly received by petitioner on July 11, 2014. The said FDDA amended the disputed assessment by reducing the deficiency income tax assessment to ₱31,178,324.40, and the deficiency fringe benefit tax assessment to ₱1,355,368.47. The same FDDA imposes compromise penalties in the total amount of ₱70,000.00.

Petitioner then filed a *Petition for Review* with the Court in Division on August 8, 2014. The case was docketed as CTA Case No. 8860.

Prior thereto, or on July 28, 2014, petitioner received the letter dated July 23, 2014, signed by RD Araceli L. Francisco, informing petitioner that due to its alleged failure to act on the FDDA, the entire docket of said case will be forwarded to Collection Division of said Revenue Region No. 6 – Manila. Subsequently, respondent issued and caused the service to petitioner the *Preliminary Collection Letter* dated August 20, 2014.

Meanwhile, on August 20, 2014, petitioner filed an *Urgent Motion to Suspend Collection of Taxes*, requesting the Court in Division to order respondent to hold in abeyance the enforcement of the FDDA, and the collection of the alleged deficiency taxes to maintain the *status quo* pending the resolution of the instant case. The Court in Division granted the said *Urgent Motion*, subject to petitioner's posting of a bond in the amount of ₱50,000,000.00.

On September 25, 2014, respondent filed a *Motion for Reconsideration* of the Court in Division's Resolution granting petitioner's *Urgent Motion to Suspend Collection of Taxes.*

On the same date, respondent filed his *Answer.*

On November 7, 2014, petitioner filed an *Omnibus Motion to Allow and Admit the Attached Amended Petition*, which the Court in Division granted in the Resolution dated January 8, 2015.

Respondent subsequently filed his *Answer (Re: Amended Petition for Review dated 07 November 2014)*, interposing certain special and affirmative defenses, summarized as follows:

> (1) that the subject assessment is valid and correct and that petitioner has the burden of proof to impugn its validity;
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> (2) that the assessments were issued in the regular course and within the reglementary period to assess provided by law;
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> (3) that in the instant case, the subject expense which petitioner treated as representation expense should be considered as benefit to its employees subject to fringe benefit tax (FBT);
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> (4) that records show that petitioner received the FLD/Final Assessment Notice (FAN) dated July 13, 2012, on July 18, 2012, and that it filed its protest thereto only on September 14, 2012 or more than thirty (30) days from receipt of the FLD/FAN; and
>
> (5) that the said FLD/FAN has become final, executory and demandable and that the Court has no jurisdiction to entertain the *Amended Petition.*

On November 17, 2014, the Court in Division denied respondent's *Motion for Reconsideration* of the Resolution dated September 10, 2014, and affirmed its resolution granting the *Urgent Motion to Suspend Collection of Taxes*, subject to the submission of various documents relative to the posting of a bond.

Eventually, upon compliance with the requirements for the posting of a bond, the Court in Division reiterated its ruling granting the *Urgent Motion to Suspend Collection of Taxes*, and the approval of the surety bond filed by the petitioner.

The pre-trial was set by the Court in Division on March 5, 2015. Petitioner filed its *Pre-Trial Brief* on March 2, 2015.

On March 2, 2015, respondent filed an *Omnibus Motion to Dismiss and Reset Pre-Trial Conference* on the ground that the Court in Division has no jurisdiction to take cognizance of the instant petition, considering that the FLD/FANs all dated July 13, 2012 have become final and executory for failure of the petitioner to file a protest within the thirty (30) day prescriptive period.

During the Pre-trial Conference held on March 5, 2015, only petitioner's counsel appeared while respondent's counsel failed to appear despite due notice. Petitioner's counsel moved that petitioner be allowed to present its evidence *ex-parte*. However, the Court in Division denied said motion, and reset the pre-trial conference to April 13, 2015; also denied respondent's *Omnibus Motion to Dismiss*; and ordered respondent to file his pre-trial brief and affidavits of his witnesses. [4] Respondent filed his *Pre-Trial Brief* on March 31, 2015.

As directed by the Court during the Pre-trial Conference held on April 13, 2015[5], the parties submitted their *Joint Stipulation of Facts* on May 8, 2015. Thereafter, on May 18, 2015, the Court issued a *Pre-Trial Order*.

During trial, petitioner presented Milagros B. Gawaran, Haydee Reyes-Arcenas, Architect Lilia Calulot and Paulo Campos, Jr., as its witnesses.

On the other hand, respondent presented ROs Fremarie Aquino, Allan C. Quizon and Armando Macatangay and counsel Atty. Christopher Eugenio, as his witnesses.

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[4] Resolution dated March 5, 2015, Division Docket, CTA Case No. 8860, Vol. II, p. 608
[5] Minutes of Hearing held on April 13, 2015, Division Docket, CTA Case No. 8860, Vol. II, p. 665

On July 30, 2015, petitioner filed its *Formal Offer of Exhibits,* offering Exhibits "P-1" to "P-20", which were admitted by the Court in Division, except for Exhibits "P-13", "P-14", "P-15", and "P-20", for failure to submit the originals for comparison.

A *Motion for Reconsideration* was filed by petitioner on the denial of the aforementioned exhibits. The Court in Division partially granted the same, maintaining the denial of the admission of Exhibit "P13". However, the Court in Division eventually admitted Exhibit "P-13", subject to the Court in Division's final evaluation and/or appreciation of its purposes, materiality, relevancy and probative value to the issues involved in this case.

Respondent filed his *Formal Offer of Evidence* on March 22, 2018, offering Exhibits "R-1" to "R-23-a", which were all admitted by the Court in Division on September 20, 2017.

Petitioner filed its *Memorandum* on October 25, 2017; while respondent filed his *Memorandum* on October 27, 2017. Thereafter, CTA Case No. 8860 was submitted for decision on November 2, 2017.

In the assailed Decision dated August 22, 2018,[6] the Court in Division denied the *Petition for Review* for lack of jurisdiction.

Petitioner then filed its *Motion for Reconsideration (of the Decision dated 22 August 2018)* on September 7, 2018,[7] while respondent filed its *Comment (Re: Motion for Reconsideration)* on October 4, 2018.[8] In the assailed Resolution dated October 30, 2018,[9] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Thus, on November 21, 2018, petitioner filed before this Court *En Banc* the instant *Petition for Review.*[10]

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[6] EB Docket, pp. 52 to 73; and Division Docket (CTA Case No. 8860) – Vol. III, pp. 1114 to 1135.
[7] Division Docket (CTA Case No. 8860) – Vol. III, pp. 1138 to 1158.
[8] Division Docket (CTA Case No. 8860) – Vol. III, pp. 1164 to 1166.
[9] EB Docket, pp. 74 to 86; and Division Docket (CTA Case No. 8860) – Vol. III, pp. 1167 to 1179.
[10] EB Docket, pp. 1 to 46.

In the Resolution dated December 12, 2018,[11] the Court *En Banc* ordered respondent to file his *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof. On January 9, 2019, respondent filed a *Motion to Admit Attached Comment (To Petitioner's Petition for Review),*[12] praying that the attached *Comment (To Petitioner's Petition for Review)*[13] thereto be admitted.

In the Resolution dated January 24, 2019,[14] the Court *En Banc* granted respondent's *Motion*, and admitted the attached *Comment (To Petitioner's Petition for Review)* thereto. In the same Resolution, the Court *En Banc* submitted the instant case for decision.

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the Court *En Banc*'s resolution, to wit:

> "I. THE CTA SECOND DIVISION ERRED IN FINDING THAT IT HAS NO JURISDICTION OVER THE PRESENT CASE;
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> II. THE CTA SECOND DIVISION ERRED IN FINDING THAT THE FINAL DECISION ON DISPUTED ASSESSMENT ('FDDA') DID NOT SUPERSEDE THE FINAL ASSESSMENT NOTICE ('FAN');
>
> III. THE CTA SECOND DIVISION FAILED TO APPRECIATE THE EVIDENCE PRESENTED BY THE PETITIONER TO PROVE THE PETITIONER'S RECEIPT OF THE FAN ON 16 AUGUST 2012;
>
> IV. NEITHER THE REGISTRY RECEIPT, THE POSTAL CERTIFICATION, NOR THE TESTIMONY OF MR. ARMANDO MACATANGAY IS SUFFICIENT TO PROVE THE ALLEGED RECEIPT BY THE PETITIONER OF THE FAN ON 18 JULY 2012;

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[11] EB Docket, pp. 382 to 383.
[12] EB Docket, pp. 384 to 388.
[13] EB Docket, pp. 391 to 393.
[14] EB Docket, pp. 395 to 396.

V. SINCE THE CTA SECOND DIVISION HAS JURISDICTION OVER THE PETITION, THE SUBSTANTIVE ISSUES RAISED THEREIN MERIT CONSIDERATION;

VI. THERE MUST BE GAIN OR PROFIT TO CONSTITUTE INCOME WHICH MUST BE ACTUALLY RECEIVED TO FORM PART OF THE TAXABLE INCOME SUBJECT TO INCOME TAX;

VII. GAIN ON SALE FROM REAL PROPERTY CLASSIFIED AS CAPITAL ASSET IS NOT SUBJECT TO INCOME TAX, BUT IS SUBJECT TO CAPITAL GAINS TAX;

VIII. EVEN ASSUMING THAT THE STA. ANA PROPERTY IS AN ORDINARY ASSET AS THE RESPONDENT ALLEGES, THE TAX DUE THEREON WAS ALREADY PAID BY PETITIONER;

IX. NOT ALL FRINGE BENEFITS RECEIVED BY EMPLOYEES ARE SUBJECT TO FRINGE BENEFITS TAX; AND,

X. COMPROMISE PENALTY MAY NOT BE IMPOSED WITHOUT TAXPAYER'S CONSENT."[15]

Petitioner's arguments:

Petitioner argues that the Court in Division acquired jurisdiction over the subject matter of its *Petition for Review.* It allegedly submitted the said *Petition* within thirty (30) days from receipt of the FDDA in accordance with Section 3, Rule 7 of the Revised Rules of the Court of Tax Appeals.

Allegedly, respondent is estopped from claiming that the FAN has become final and executory; that the FDDA has already superseded the FAN; and that the FDDA is clearly an amended version of the FAN as shown in the wording of the said document.

As regards the receipt of the FAN, petitioner maintains that its duly authorized representative received the FLD/FAN only on August

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[15] *Petition for Review*, EB Docket, p. 8.

16, 2012. As such, it filed the protest against the FLD/FAN on September 14, 2012, which was well within the 30-day reglementary period within which to file a protest.

With respect to the substantive issues of the case, petitioner argues that there must be gain or profit to constitute income which must be actually received to form part of taxable income subject to income tax. In this case, the subject deficiency taxes were allegedly assessed based on mere assumptions and discrepancies per petitioner's Audited Financial Statement (AFS) and its General Ledger. According to petitioner, it has reconciled the said discrepancies and supported such reconciliation accordingly.

Moreover, petitioner points out that the subject Sta. Ana property was not used in trade or business. As such, the same is allegedly classified as capital asset which is subject to capital gains tax (CGT) upon its disposition or transfer and not to the regular corporate income tax. Considering that it has paid the six percent (6%) CGT, the assessment for deficiency income tax on the gain on sale of the said property should be cancelled for lack of legal basis.

Furthermore, even assuming that the subject Sta. Ana property is an ordinary asset, petitioner contends that it has more than sufficient: (1) net operating loss to offset the gross income from the sale of the property; (2) minimum corporate income tax credits and CGT payment, to offset any income tax liability derived from the sale of the subject property.

As regards the deficiency fringe benefit tax (FBT), petitioner argues that the subject expenses, particularly membership fees, sports and social activities reimbursed by petitioner to one of its officers are in the nature of representation expenses, and not subject to FBT pursuant to Revenue Regulations (RR) No. 10-02 dated July 10, 2002.

In addition, the said expenses fall under the exception in Section 33 of the National Internal Revenue Code (NIRC) of 1997 which states that when the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer, or when it is for the convenience or advantage of the employer, the FBT shall not apply.

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Finally, petitioner claims that compromise penalties are imposed only whenever there is a violation of the provisions of the NIRC. It is petitioner's position that it should not be held liable for compromise penalty considering that there is no criminal or civil liability in this case.

Respondent's counter-arguments:

Respondent counter-argues that the arguments raised in the instant *Petition for Review* are mere repetitions and reiterations of those previously raised and discussed which had been duly considered, thoroughly, exhaustively and eloquently discussed and explained by the Court in Division in the assailed Decision and Resolution.

Allegedly, no new arguments were raised by petitioner, and that there is no cogent reason to reverse and aside the same.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Court in Division has no jurisdiction over CTA Case No. 8860.

We sustain the ruling of the Court in Division that the subject tax assessments have become final, executory and demandable. Hence, it correctly ruled that it had no jurisdiction to entertain petitioner's *Petition for Review* in CTA Case No. 8860.

Section 228 of the NIRC of 1997 provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* – xxx xxx
>
> 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

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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation <u>within thirty (30) days from receipt of the assessment</u> 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." *(Emphasis and underscoring supplied)*

Based on the foregoing, an assessment may be protested administratively within thirty (30) days from receipt thereof. However, an assessment becomes final and unappealable, if within thirty (30) days from receipt of the assessment, the taxpayer fails to file his or her protest requesting for reconsideration or reinvestigation as provided in Section 228 of the NIRC.[16] Moreover, a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 **can no longer be contested**.[17] In other words, a tax assessment, which has attained finality, can no longer be disputed.

Relative thereto, it must be emphasized that the exclusive appellate jurisdiction of this Court in Division refers, *inter alia*, to decisions of respondent in cases involving disputed assessments, in accordance with Section 7(a) of Republic Act (RA) No. 1125[18], as amended by RA No. 9282[19], to wit:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **<u>Decisions of the Commissioner of Internal Revenue Code in cases involving disputed</u>**

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[16] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018.

[17] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

[18] AN ACT CREATING THE COURT OF TAX APPEALS.

[19] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue Code in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis and underscoring supplied)*

Based on the foregoing, this Court exercises exclusive appellate jurisdiction to review **not the assessments themselves**, but the **decisions involving disputed ones** arising under the NIRC.[20] Evidently, the rule is that, for this Court to acquire jurisdiction, an assessment **must first be disputed by the taxpayer** and ruled upon by respondent to warrant a decision from which a petition for review may be taken to this Court.[21]

In the instant case, however, the tax assessments embodied in the FLD dated July 13, 2012 can no longer be disputed, simply because, as will be shown momentarily, the same have already attained finality. The subsequent issuance of the FDDA is of no moment, considering that the assessment from which the FDDA was based did not ripen into a disputed assessment.

Correspondingly, the FDDA dated June 18, 2014[22] cannot be considered as a decision of the respondent involving a disputed assessment. Hence, the Court could not acquire jurisdiction to review the FDDA.

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[20] *People of the Philippines vs. Sandiganbayan, et al.*, G.R. No. 152532, August 16, 2005; *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968; *St. Stephen's Association, et.a.l, vs. Collector of Internal Revenue*, G.R. No. L-11238, August 21, 1958.

[21] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005

[22] Exhibit "P-1", Division Docket (CTA Case No. 8860) – Vol. II, pp. 728 to 730.

Neither can petitioner argue that the said FDDA is an amended version of the FLD or Assessment Notice (FAN). As already pointed out, a tax assessment that has become final can no longer be contested. Thus, it follows that the tax assessments stated in the FLD dated July 13, 2012, which has become final, for failure of petitioner to file a timely protest thereto, is already undisputable or uncontestable. Such being the case, the said FDDA could not have legally amended the said FLD or FAN.

In any case, the Court in Division indeed did not acquire jurisdiction over petitioner's *Petition for Review* (CTA Case No. 8860), which assailed the said FDDA as a decision involving disputed assessments.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[23] Specifically, this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[24]

Nevertheless, petitioner points out that the very reason why petitioner filed its *Petition for Review* (CTA Case No. 8860) with the Court in Division was to follow the instruction given to it by respondent; that respondent misled petitioner into believing that there was a need to oppose the FDDA, which it issued, lest the FDDA shall become final, executory and demandable by default; and that respondent led petitioner to believe, when respondent issued the FDDA, that there was no timeliness issue with the filing of the protest.

Petitioner's stance is apparently untenable.

The matter of jurisdiction cannot be waived because it is conferred by law and **is <u>not</u> dependent on** the consent or objection or **the acts or omissions of the parties or any one of them**.[25] Simply put, jurisdiction over a subject matter is conferred by law and not by the parties' action or conduct. Estoppel generally does not

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[23] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. 185666, February 4, 2015, citing *Commissioner of Internal Revenue v. Villa, et al.*, 130 Phil. 3, 4 (1968).

[24] *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.,* G.R. No. 221780, March 25, 2019, citing *CIR V. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 146 Phil. 139, 152 (2014).

[25] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

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confer jurisdiction over a cause of action to a tribunal where none, by law, exists.[26] Thus, the determination of the Court *a quo*'s jurisdiction cannot be made to depend on respondent's supposed action or instruction to file petitioner's *Petition for Review* (CTA Case No. 8860).

Nevertheless, the Court *En Banc* finds this an opportune time to caution respondent to be more circumspect and prudent in the discharge of his functions, more particularly in acting on a protest of a tax assessment, which has become final, executory and demandable, and in issuing directives to taxpayers to appeal its supposed decision on a disputed assessment, so as to avoid an instance where a taxpayer, such as petitioner, relying on an inaccurate and baseless instruction from respondent, unduly exerted resources, time and effort in appealing before this Court the said decision.

Petitioner failed to file a valid protest against the FLD/FAN within the 30-day period, hence, the assessments have become final, executory and demandable.

The aforequoted provisions of Section 228 of the NIRC of 1997 lay down the procedure in protesting an assessment. To implement the said provision, RR No. 12-99 was issued which specifies the due process requirement to be observed in issuing deficiency tax assessments. Pertinent portions of Section 3 of the said RR reads:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or

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[26] *Magno vs. People of the Philippines, et al.*, G.R. No. 171542, April 6, 2011.

> jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). **<u>The same shall be sent to the taxpayer only by registered mail or by personal delivery</u>. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**
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> 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 date of receipt thereof.** If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
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> 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.**" *(Emphases and underscoring supplied)*

Based on the foregoing, respondent or his duly authorized representative shall issue the FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes which shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based. It further provides that the FLD/FAN shall be sent to the taxpayer only by *registered mail* or by *personal delivery*. Thereafter, the taxpayer may protest administratively the assessment within thirty (30) days from receipt thereof; otherwise, the assessment becomes final, executory, and demandable.

In the assailed Decision, the Court in Division sustained respondent's claim that the FLD/FAN were sent via registered mail, and were received by petitioner on July 18, 2012. Counting thirty (30) days from the said date, the last day for petitioner to file its protest was on August 17, 2012. Petitioner, however, filed its protest against the aforementioned FLD/FAN only on September 14, 2012.[27] Thus, the Court in Division correctly ruled that the assessment already became final, executory, and unappealable upon the expiration of the 30-day period to protest on August 17, 2012.

On the other hand, petitioner insists that the FLD/FAN were received via personal service on August 16, 2012.[28] Hence, it had thirty (30) days therefrom or until September 15, 2012 to file its administrative protest. Accordingly, it argues that the filing of its protest on September 14, 2012 was well within the said 30-day period.

Evidently, while it is undisputed that petitioner received the FLD/FAN, the parties, however, have conflicting claims as regards the date of receipt of the FLD/FAN.

Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[29]

In this case, it bears emphasis that petitioner did not dispute the receipt of the FLD/FAN. It however denies respondent's allegation that the FLD/FAN were served by registered mail. It was thus incumbent upon respondent to establish by competent evidence that the service of the FLD/FAN was done via registered mail.

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[27] Exhibit "P-12", Division Docket (CTA Case No. 8860) – Vol. II, pp. 807 to 816.
[28] Exhibit "P-11", Division Docket (CTA Case No. 8860) – Vol. II, p. 805.
[29] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.* [30] ("*GJM* case"), the Supreme Court ruled as follows:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
>
> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. xxx xxx xxx."

Based on the foregoing jurisprudential pronouncements, in case the concerned taxpayer denies receipt of a tax assessment issued by respondent, the burden of proof is shifted to the latter. To prove the fact of mailing, respondent must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would have been signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing.

In the instant case, respondent presented the following documents as proof that the FLD/FAN were served via registered mail:

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[30] G.R. No. 202695, February 29, 2016.

1. A faithful reproduction of the original of the Registry Receipt No. 922821;[31]

2. A faithful reproduction of the original of the Transmittal Slip of FAN/FLD for mailing, with the attached Registry Receipt No. 922821, indicating the date for mailing on July 13, 2012;[32]

3. A faithful reproduction of the original of the *Certification* dated September 22, 2014, issued by Olivia E. Josue, OIC-Chief, Admin & Human Resource Management Division of the BIR,[33] stating that the FAN with FLD was mailed to the registered address of petitioner on July 13, 2012 under Registry Receipt No. 922821.

4. A faithful reproduction of the original *Certification* dated September 23, 2014 issued by Rodrigo SP. Romero, Head of the Records Unit, Central Post Office, Office of the Postmaster,[34] stating that the Registered Mail No. 922821 addressed to petitioner was delivered on July 18, 2012; and

5. The Judicial Affidavit of Armando C. Macatangay, the person who mailed the FLD/FAN via registered mail;[35]

In the assailed Decision, the Court in Division held that the evidence presented by respondent, specifically the Registry Receipt No. 922821, the Judicial Affidavit of Armando C. Macatangay and the Certification issued by the Head of the Records Unit of the Postmaster, are more than sufficient to prove the date of receipt of the FLD/FAN via registered mail.

We find no cogent reason to deviate from the said findings of the Court in Division.

Clearly, respondent was able to submit not only the pertinent Registry Receipt, but also the Certification issued by the Office of the Postmaster, consistent with the doctrinal pronouncements in the *GJM* case.

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[31] Exhibit "R-17", Division Docket (CTA Case No. 8860) – Vol. II, p. 663.
[32] Exhibit "R-16", Division Docket (CTA Case No. 8860) – Vol. II, p. 663.
[33] Exhibit "R-19", Division Docket (CTA Case No. 8860) – Vol. II, p. 695.
[34] Exhibit "R-21", Division Docket (CTA Case No. 8860) – Vol. II, p. 697.
[35] Exhibit "R-22", Division Docket (CTA Case No. 8860) – Vol. II, pp. 653 to 654.

Moreover, in the Judicial Affidavit of Armando C. Macatangay, he testified as follows, to wit:

"JUDICIAL AFFIDAVIT OF
ARMANDO C. MACATANGAY
xxx xxx xxx

Q1: Please state your name, address, and other personal circumstances.
A: I am Armando C. Macatangay, Filipino, of legal age, Administrative Assistant III of the BIR and currently assigned at the Administrative Division of BIR, Revenue Region No. 6-Manila.

Q2: As Administrative Assistant III of the BIR, what are your functions and duties?
A: I am tasked, among others, to personally send by mail assessment notices, letters and other correspondences issued by the BIR.

Q3: The subjects of the case are the deficiency tax assessments for taxable year ending 31 March 2009 issued to UPSI Property Holdings, Inc. under Assessment Notice No. 34-FY033109-IT-3526, Assessment Notice No. 34-FY033109-FBT-3527 and Formal Letters of Demand with Details of Discrepancy, all dated July 13, 2012. Are you familiar with the said subject deficiency tax assessments?
A: Yes.

Q4: Why are you familiar with the subjects of this case?
A: I was the one who personally mailed the Final Assessment Notices and Formal Letters of Demand with Details of Discrepancy issued to UPSI Property Holdings, Inc. for taxable year ending 31 March 2009, pursuant to the request through Transmittal Slip from the Assessment Division of BIR.

xxx xxx xxx

Q7: In what manner did you send the Final Assessment Notices and Formal Letter of Demand with details of Discrepancy?
A: **I sent the Final Assessment Notices and Formal**

> **Letters of Demand with Details of Discrepancy on 13 July 2012 through registered mail under Registry Receipt No. 922821, by depositing a copy of the said Final Assessment Notices and Formal Letters of Demand with Details of Discrepancy at the Manila Central Post Office, in a sealed envelope, addressed to the petitioner's registered address at 1122 Gen. Luna St., Paco, Manila, and with the instruction to the postmaster to return the mail to the sender after ten days if undelivered.**" *(Emphases supplied)*

It is evident from the foregoing that Armando C. Macatangay personally mailed the FAN with FLD through registered mail with Registry Receipt No. 922821, on July 13, 2012.

To support the foregoing testimony, the Court *En Banc* notes the *Certification* issued by Olivia E. Josue, BIR OIC-Chief, Admin & Human Resource Management Division, stating that the FAN with FLD was mailed to the registered address of petitioner on July 13, 2012, under Registry Receipt No. 922821.

This was further corroborated by the said *Certification* issued by the Head of the Records Unit of the Postmaster, Rodrigo SP. Romero, stating that Registered Mail No. 922821 posted on July 13, 2012, and addressed to "UPSI Property Holdings Inc." was delivered by the postman and duly received by Jeshra Faye Layog on July 18, 2012.

Based on the foregoing evidence, it is clearly established that the FAN/FLD addressed to petitioner were transmitted for mailing on July 13, 2012, having as reference Registry Receipt No. 922821, and that the same documents were delivered by the Philippine Postal Corporation to the registered address of petitioner, and were received by the latter, through Jeshra Faye Layog, on July 18, 2012.

It bears stressing that the Certifications issued by the OIC-Chief, Admin & Human Resource Management Division of the BIR and the Office of the Postmaster are public documents, having been issued by public officers in the performance of their official duty. Accordingly, the said documents constitute *prima facie* evidence of the facts therein stated, pursuant to Rule 132, Section 23, of Rules of Court, to wit:

> "SEC. 23. *Public documents as evidence.* — **Documents consisting of entries in public records made in the performance of duty by a public officer are *prima facie* evidence of the facts therein stated**. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter." *(Emphasis supplied)*

Based on the foregoing rule, documents consisting of entries in public records made in the performance of duty by a public officer are *prima facie* evidence of the facts therein stated.

Prima facie evidence is defined as evidence good and sufficient on its face.[36] Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient.[37] Furthermore, it is well settled that the evidentiary nature of public documents must be sustained in the absence of strong, complete, and conclusive proof of its nullity.[38]

In the instant case, petitioner failed to offer competent evidence to controvert the contents of the said Certifications. Petitioner likewise did not present any evidence to prove that the persons who issued the Certifications were not authorized to do so, nor did it present evidence to show that they acted beyond their authority.

With respect to petitioner's allegation that there is nothing in the records to show that Jeshra Faye Layog, claimed by respondent to have received the FLD/FAN, was an officer duly-authorized by petitioner, the same deserves scant consideration.

We agree with the Court in Division's findings that petitioner did not dismiss, nor deny, the authority of Jeshra Faye Layog, who received the notices at petitioner's office address on July 18, 2012.

Moreover, the burden of proof to controvert the contents of the Certifications lies with petitioner. As public documents, the Certifications issued by the OIC-Chief, Admin & Human Resource

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[36] *Robert P. Wa-acon v. People of the Philippines,* G.R. No. 164575, December 6, 2006, *citing* H. Black, et al., BLACK'S LAW DICTIONARY 1190 (6th ed., 1990).
[37] *Ibid.*
[38] *Armando V. Sierra v. Court of Appeals, et al.*, G.R. No. 90270, July 24, 1992.

Management Division of the BIR, and by the Office of the Postmaster, constitute *prima facie* evidence that the FAN/FLD were served to petitioner, through Jeshra Faye Layog, on July 18, 2012.

More importantly, it is worth noting that petitioner did not deny the receipt of the FLD/FAN. In fact, it categorically admits the receipt thereof, albeit on a different mode of service. It alleges that the FLD/FAN were served on August 16, 2012 by personal service.

Accordingly, the Court *En Banc* will now determine whether petitioner was able to present sufficient evidence to prove the said allegation.

UPSI failed to establish the receipt of the FAN/FLD on August 16, 2012 by personal delivery.

As regards its allegation that the FAN/FLD were received via personal service on August 16, 2012, petitioner presented as proof a faithful reproduction of the original thereof,[39] bearing an unidentified signature with the date of receipt written on one of the assessment notices, in particular, Assessment Notice No 34-FY033109-IT-3526.

It bears noting that petitioner failed to specifically identify, not only the person who received the said FAN/FLD, but also the BIR officer who supposedly served the notice by personal delivery.

More glaringly, the Court *En Banc* notes that the unidentified signature and the supposed date of personal delivery are not shown in the original copy of the said Assessment Notice No. 34-FY033109-IT-3526 found in the BIR records[40], as well as in the copy of the same assessment notice offered by respondent as Exhibit "R-11".[41] If it is true that the mode of service was indeed done through personal delivery by the BIR, the purported signature of the said unidentified recipient should logically appear on the said documents.

Petitioner's self-serving claim cannot be relied upon by the Court *En Banc*. Petitioner should have at least presented a clearer

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[39] Exhibit "P-11", Division Docket (CTA Case No. 8860) – Vol. II, p. 805.
[40] BIR Records, p. 338.
[41] Division Docket (CTA Case No. 8860) – Vol. II, p. 656.

and more convincing evidence to substantiate and corroborate its claim.

In view thereof, the Court *En Banc* finds that petitioner failed to establish by sufficient evidence that the receipt of the FLD/FAN were done by personal delivery. Thus, since the said mode of service was not established, the inevitable conclusion is that petitioner received the subject FLD/FAN, through registered mail, as duly proven by respondent.

Taking into account the foregoing, it cannot be denied that the evidence presented by respondent prevails over that of the evidence presented by petitioner. This Court *En Banc*, therefore, sustains the Court in Division's findings that the FLD/FAN were received by petitioner by registered mail on July 18, 2019.

Consequently, the assailed assessment has become final, executory, and unappealable due to the failure of petitioner to file a valid protest within the 30-day period. With this finding, it is no longer necessary to delve into the remaining issues.

In sum, the Court *En Banc* sees no compelling reason to disturb the findings and conclusions of the Court in Division.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the Decision dated August 22, 2018 and the Resolution dated October 30, 2018, both rendered by the Court in Division in CTA Case No. 8860, are **AFFIRMED *IN TOTO***.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
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