REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

B. NEVALGA ENTERPRISES CORP. BY: BENITO B. NEVALGA, *Petitioner,*	**CTA CASE NO. 10159**
	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 17 2019 10:38 a.m.

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RESOLUTION

This resolves petitioner's "Petition for Review" filed on September 3, 2019.

At the outset, the Court wishes to discuss its power to dismiss a case motu propio, as provided in *Section 1, Rule 9 of the 1997 Revised Rules of Court (RROC)*, to wit:

> "RULE 9
> Effect of Failure to Plead
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> SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, <u>when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter</u>, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, <u>the court shall dismiss the claim</u>."[1]

Under this provision of law, the Court may motu proprio dismiss a case when any of the four (4) grounds referred above is present. These are: *(1)* lack of jurisdiction over the subject matter; *(2)* litis pendentia; *(3)* res judicata; and *(4)* prescription of action.[2]

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[1] Emphases supplied.
[2] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation, et. al.,* G.R. No. 166462, October 24, 2012, 684 SCRA 453.

We then refer to *Section 3, Rule 4, of the Revised Rules of the Court of Tax Appeals (RRCTA)* for the jurisdiction of the Court in Division:

> "SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> xxx xxx xxx"[3]

As to what such decisions are, *Section 228 of the 1997 NIRC* sheds light on this:

> "SECTION 228. *Protesting of Assessment.* — xxx
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> xxx xxx xxx
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> 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.
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> 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."[4]

Relevant thereto is *Revenue Regulations (R.R.) No. 22-1999*, as amended by *RR No. 18-2013*, which provide as follows:

> "3.1.4 Disputed Assessment. — xxx

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[3] Emphases supplied.
[4] Emphases supplied.

> xxx xxx xxx
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> If the protest is denied, in whole or in part, by the **Commissioner's duly authorized representative**, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> xxx xxx xxx
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> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the **Commissioner**, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA."[5]

It is evident from the foregoing that if the Commissioner of Internal Revenue (CIR)'s representative issues the denial to the taxpayer's protest, the latter has an option to either *(1)* appeal to the CTA within thirty (30) days from date of receipt of the decision; or *(2)* elevate the protest through a request for reconsideration to the CIR within thirty (30) days from date of receipt of the decision. However, if it is the CIR himself/herself who denied the protest, appeal can only be made to the CTA within thirty (30) days from date of receipt of the decision. Otherwise, the assessment shall become final, executory and demandable.

As provided in the Petition for Review, petitioner allegedly received the undated Final Decision on Disputed Assessments (FDDA) on July 20, 2016[6]. It must be noted that the then CIR herself denied petitioner's protest. Therefore, it had thirty (30) days from July 20, 2016 or until August 19, 2016 to elevate its protest with the CTA. However, instead of doing so, petitioner filed a Motion for Reconsideration with the CIR on August 2, 2016, awaited the CIR's decision thereon (which it received on August 16, 2019), and only then did it file an appeal before the CTA on September 3, 2019. Accordingly, the assessment has attained finality.

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[5] Emphases supplied.

[6] Year was changed to 2016, as corrected from 2019 provided in the Petition for Review.

The Court would like to emphasize that jurisdiction over the subject matter is conferred by law and is determined by the allegations in the complaint and the character of the relief sought.[7] As stated in the case of *Glynna Foronda-Crystal v. Aniana Lawas Son*[8]:

> "Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists."

Therefore, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[9]

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

SO ORDERED.

(On Leave)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[7] *Spouses Claudio and Carmencita Trayvilla v. Bernardo Sejas and Juvy Paglinawan*, G.R. No. 204970, February 1, 2016.
[8] G.R. No. 221815, November 29, 2017.
[9] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.