REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DESMICHELS CORPORATION,
Petitioner,

CTA CASE NO. 8486

-versus-

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 09 2015
2:47 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This is a Petition for Review filed by Desmichels Corporation to seek the reversal and setting aside of the Final Assessment Notice (FAN) dated April 14, 2011 and the Final Notice Before Seizure (FNBS) dated March 12, 2012, and the issuance of a Temporary Restraining Order (TRO) against the Commissioner of Internal Revenue (CIR) and her authorized representative, enjoining and prohibiting them from collecting the subject deficiency income tax assessment for taxable year 2007 in the aggregate amount of One Million Eight Hundred Twenty Thousand Four Hundred Eleven Pesos and 94/100 (₱1,820,411.94).

THE PARTIES

Petitioner Desmichels Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC).[1] It is

[1] Exhibit "A", docket, p. 223.

primarily engaged in the manufacture and trade on wholesale and retail basis of jewelries and other goods, with office address at 73 Sitio Kamias II, Mambugan, Antipolo City.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with power to decide administrative tax cases, including disputed assessments. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

STATEMENT OF FACTS

On November 13, 2002, former President Gloria Macapagal Arroyo signed into law Republic Act (RA) No. 9178, entitled "An Act to Promote the Establishment of Barangay Micro Business Enterprises (BMBEs), Providing Incentives and Benefits Therefor, and for Other Purposes", otherwise known as the "Barangay Micro Business Enterprises (BMBEs) Act of 2002". Thereafter, on February 7, 2003, then Secretary of the Department of Trade and Industry Manuel A. Roxas III issued the Implementing Rules and Regulations (IRR) of RA No. 9178.

On December 11, 2003, pursuant to the provisions of RA No. 9178 and its IRR, petitioner applied for and was granted by the City Treasurer of Antipolo City a BMBE Certificate of Authority[3] (1st BMBE Certificate of Authority), which was valid for two (2) years, entitling it to all the benefits and incentives, subject to the terms and conditions of RA No. 9178 and its IRR, until its expiration date on December 1, 2005.

After the 1st BMBE Certificate of Authority's expiration and upon petitioner's application, the City Treasurer of Antipolo issued BMBE Certificates of Authority to the former on the following dates, and with the following dates of expiration:

	Date Issued	**Date of Expiration**
2nd BMBE Certificate of Authority[4]	December 29, 2005	December 19, 2007
3rd BMBE Certificate of Authority[5]	November 29, 2007	November 29, 2009
4th BMBE Certificate of Authority[6]	November 6, 2009	November 6, 2011

[2] Exhibit "B", docket, p. 224.
[3] Exhibit "B", docket, p. 224.
[4] Exhibit "C", docket, p. 225.
[5] Exhibit "D", docket, p. 226.

5th BMBE Certificate of Authority[7]	October 24, 2011	October 24, 2013

On May 5, 2011, petitioner received a FAN and a Formal Letter of Demand (FLD) from the BIR dated April 14, 2011, finding it liable for alleged deficiency income tax for taxable year 2007 in the aggregate amount of P1,820,411.94.[8]

In a letter[9] dated May 25, 2011, petitioner requested a one (1) month extension period to file its protest. Thereafter, on June 16, 2011, petitioner again requested for another time extension to file its protest.[10]

On July 4, 2011, petitioner filed its Protest to the FAN dated July 1, 2011.[11] Then, a Preliminary Collection Letter (PCL) dated February 22, 2012 was issued by the BIR signed by Assistant Revenue District Officer Jose G. Luna of Revenue District Office (RDO) No. 45-Marikina.[12]

Petitioner considered the issuance of the PCL as denial of its Protest by the Regional Director, and thus, on March 13, 2012, it filed a Letter dated March 12, 2012 before the office of respondent CIR, appealing the implied denial of its Protest and requesting the cancellation of the assessment and the PCL.[13]

On April 11, 2012, before its appeal could be acted upon, petitioner received an FNBS dated March 12, 2012 issued by Assistant Revenue District Officer Jose G. Luna.[14]

Petitioner filed its Petition for Review (with Application for Preliminary Injunction and/or Temporary Restraining Order)[15] before this Court on May 9, 2012. Respondent filed her Comment and Opposition to Petitioner's Application for Preliminary Injunction and/or Temporary Restraining Order[16] on July 2, 2012, to which petitioner filed a Reply[17] on July 9, 2012. Subsequently, respondent filed her Answer[18] on July 26, 2012.

6 Exhibit "E", docket, p. 227.
7 Exhibit "F", docket, p. 228.
8 Par. 2, Stipulated Facts, Pre-Trial Order, docket, p. 168.
9 Exhibit "I", docket, p. 233.
10 Exhibit "J", docket, p. 234.
11 Par. 3, Stipulated Facts, Pre-Trial Order, docket, pp. 168-169.
12 Par. 4, Stipulated Facts, Pre-Trial Order, docket, p. 169.
13 Par. 5, Stipulated Facts, Pre-Trial Order, docket, p. 169.
14 Par. 6, Stipulated Facts, Pre-Trial Order, docket, p. 169.
15 Docket, pp. 6 to 17.
16 Docket, pp. 53 to 56.
17 Reply (Re: Respondent's Comment and Opposition to Application for Preliminary Injunction and/or Temporary Restraining Order), docket, pp. 65 to 73.
18 Docket, pp. 81 to 85.

In a Resolution[19] dated August 2, 2012, the Court granted petitioner's Application for Preliminary Injunction and/or Temporary Restraining Order which was treated as a motion for Suspension of Collection of Tax under Rule 10 of the Revised Rules of the Court of Tax Appeals (RRCTA), restraining respondent and any of her agents or persons acting on her behalf from issuing a Warrant of Distraint and/or Levy against petitioner. The Court also enjoined all acts to collect the alleged tax deficiencies until further orders, upon petitioner's filing of a bond in the amount of P2,730,617.91 and submission of required documents within ten (10) days from receipt thereof. However, despite several motions for extension granted by the Court to file the bond,[20] petitioner failed to do so. Hence, the Court recalled and set aside its August 2, 2012 Resolution.[21]

The parties filed their respective Pre-Trial Briefs[22] on September 10, 2012. Afterwards, the pre-trial conference was held on September 27, 2012.[23]

As ordered by the Court, the parties submitted a Joint Stipulation of Facts and Issues[24] on October 18, 2012; which the Court adopted in its Pre-Trial Order[25] dated October 29, 2012.

During trial, petitioner presented the following witnesses: (1) Mr. Rolando M. Hiloma[26] – Corporate Secretary of petitioner; (2) Mrs. Francisca C. Reyes[27] – Local Revenue Collection Officer I of the Antipolo City Treasurer's Office; (3) Atty. Flordeliza C. Vargas[28] – Director of the National Administrative Register; and (4) Mrs. Josefina O. De Jesus[29] – City Treasurer of Antipolo City.

Petitioner likewise formally offered its documentary evidence composed of Exhibits "A" to "R-1", inclusive of sub-markings, on June 17, 2013,[30] to which respondent filed her Comments and Objections to Petitioner's Formal Offer of Evidence[31] on July 3, 2013. In the Resolution[32] dated July 31, 2013, the Court admitted Exhibits "A" to "R-1" as petitioner's documentary evidence.

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[19] Docket, pp. 87 to 91.
[20] Resolution dated September 17, 2012, docket, pp. 118 to 119; Resolution dated September 24, 2012, docket, p. 122; Minutes of the Hearing dated September 27, 2012, docket, p. 127.
[21] Resolution, docket, pp. 177 to 179.
[22] Respondent's Pre-Trial Brief, docket, pp. 98 to 103; Pre-Trial Brief, docket, pp. 104 to 111.
[23] Minutes of the Hearing dated September 27, 2012, docket, p. 127.
[24] Docket, pp. 133 to 136.
[25] Docket, pp. 168 to 173.
[26] Minutes of the Hearing dated October 29, 2012, docket, p. 174; Minutes of the Hearing dated November 19, 2012, docket, p. 175.
[27] Minutes of the Hearing dated April 24, 2013, docket, p. 191.
[28] Minutes of the Hearing dated May 27, 2013, docket, p. 200.
[29] Minutes of the Hearing dated May 27, 2013, docket, p. 200.
[30] Formal Offer of Evidence, docket, pp. 214 to 222.
[31] Comments and Objection to Petitioner's Formal Offer of Evidence, docket, pp. 250 to 251.
[32] Docket, pp. 253 to 254.

On the other hand, respondent presented the following witnesses: (1) Mr. Arnold C. Larrosa[33] – Administrative Aide II of the BIR; (2) Mr. Saladin B. Domato[34] – Revenue Officer I of the BIR; (3) Mr. Joselito G. Aguirre[35] – Letter Carrier of the Philippine Postal Corporation; and (4) Mr. Nathaniel M. Sayson[36] – Revenue Officer of the BIR.

Respondent also filed her Formal Offer of Evidence[37] on July 17, 2014, consisting of Exhibits "1" to "29-A", inclusive of sub-markings, to which petitioner filed its Comment/Opposition (To Respondent's Formal Offer of Evidence)[38] on August 11, 2014. The Court admitted Exhibits "2" to "29-A" as respondent's evidence via Resolution[39] dated September 25, 2014.

As directed by the Court,[40] petitioner filed its Memorandum[41] on November 10, 2014. On the other hand, respondent failed to file her Memorandum as per Records Verification Report[42] of the Judicial Records Division dated January 9, 2015. The case was then submitted for decision in a Resolution[43] dated January 14, 2015.

STATEMENT OF ISSUES

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

1. Whether or not petitioner is liable for the alleged deficiency income tax for taxable year 2007.

2. Whether or not petitioner failed to file the petition for review within the thirty (30) day statutory period.

3. Whether or not petitioner is exempt from income tax on all income arising from its operations as provided under RA 9178 and its Implementing Rules and Regulations.

4. Whether or not petitioner complied with the existing guidelines in the availment of Tax Exemption.

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[33] Minutes of the Hearing dated September 2, 2013, docket, p. 271.
[34] Minutes of the Hearing dated September 26, 2013, docket, p. 293.
[35] Minutes of the Hearing dated May 12, 2014, docket, p. 325.
[36] Minutes of the Hearing dated June 26, 2014, docket, p. 355.
[37] Docket, pp. 358 to 367.
[38] Docket, pp. 379 to 404.
[39] Docket, pp. 406 to 407.
[40] *Id.*
[41] Docket, pp. 421 to 447.
[42] Docket, p. 451.
[43] Docket, p. 453.
[44] Pre-Trial Order, docket, pp. 169 to 170.

5. Whether or not Department of Finance Department Order No. 17-04 is void for being *ultra vires.*

6. Whether or not the provisions of Department of Finance Department Order No. 17-04 had been duly published and filed before the ONAR, thus enforceable against the petitioner.

7. Whether or not failure to comply with the provisions of Department of Finance Department Order No. 17-04 will utterly nullify petitioner's tax exemption under RA 9178 and its IRR.

8. Whether or not the assessment against the petitioner is void for failure of the respondent to serve a Preliminary Assessment Notice to the former.

The above-enumerated issues can be summarized as follows:

"Whether or not the assessment against petitioner is valid, making it liable for deficiency income tax for taxable year 2007, amounting to P1,820,411.94."

PETITIONER'S ARGUMENTS

Petitioner claims that it is exempt from income tax on all income arising from its operations under RA No. 9178. It contends that it was duly registered as a BMBE for taxable year 2007; hence, respondent has no authority to assess and collect income tax from it. As to respondent's claim that there are certain preconditions and guidelines fixed under Department Order No. 17-04, issued by the Department of Finance, for availment and implementation of income tax exemptions of BMBEs, petitioner posits that Department Order No. 17-04 is null and void for being *ultra vires.*[45]

Furthermore, petitioner contends that the assessment is void for failure of respondent to afford it due process. It maintains that apart from the FAN and the FLD issued to petitioner, no notice or communication pertaining to the conduct of the alleged audit or investigation was previously issued and served. Petitioner asserts that respondent's non-compliance with the statutory mandate of issuance and service of a Preliminary Assessment Notice (PAN) to inform the taxpayer of the government's claim invalidates the assessment issued against it.[46]

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[45] Memorandum, docket, pp. 425 to 428.
[46] Memorandum, docket, pp. 431 to 441.

Moreover, petitioner alleges that the challenged assessment was neither timely issued nor valid. It points out that the dates of issuance appearing on both the FAN and the FLD were altered and merely superimposed on the documents, without the proper authentication of the erasures or superimpositions. According to petitioner, such material alterations are highly significant considering that April 14, 2011 was actually the last day before the three (3)-year prescriptive period of respondent's right to assess would set in.[47] In other words, the assessment is void.

RESPONDENT'S ARGUMENTS

On the other hand, respondent argues that the assessment has become final and executory when petitioner failed to file its protest on time, which is 30 days from May 05, 2011; that the statutory period of 30 days within which to file a protest may not be extended by a mere consent; that assuming the extension was valid, still, the petitioner failed to file the same on or before June 17, 2011; that there is no showing in the Taxpayer's docket that a second request for extension was ever filed with the Bureau, much less, there is no showing that the request for extension was ever granted; that petitioner failed to file its Petition for Review on time; that petitioner construed the preliminary collection letter as a denial of its protest, hence, it should have sought judicial recourse within thirty (30) days from February 22, 2012; that the filing of the Petition for Review before the Honorable Court on May 9, 2012 is therefore way beyond the statutory period prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997; that petitioner opted to file an appeal with the Commissioner of Internal Revenue which does not in any way toll the running of the 30 day period and waited for the issuance of the Final Notice Before Seizure before it filed its Petition for Review on May 9, 2012 which is way beyond the statutory period prescribed under the NIRC of 1997; that petitioner failed to comply with the existing guidelines in the availment of Income Tax Exemption as provided for under Department Order No. 17-04 of the Department of Finance; that petitioner must establish by sufficient and competent evidence that its protest is valid and binding.

THE COURT'S RULING

Whether the PAN and FAN were validly issued

Petitioner alleged that it did not receive the PAN issued by respondent, in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

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[47] Memorandum, docket, pp. 441 to 444.

"SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, that a pre-assessment 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."

Settled is the rule that when a taxpayer denies receiving an assessment from the BIR, the BIR has the burden to prove with competent evidence that such notice was indeed received by the taxpayer. In the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[48], the Supreme Court explained it in the following manner:

> "In *Protector's Services, Inc. v. Court of Appeals,* this Court ruled that **when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.**
>
> In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. **The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted.** xxx
>
> xxx xxx xxx

[48] G.R. No. 157064, August 7, 2006. Citations omitted.

> **Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence.**
>
> In the case of *Nava v. Commissioner of Internal Revenue,* this Court stressed on the importance of proving the release, mailing or sending of the notice.
>
>> While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration *(Coll. of Int. Rev. vs. Bautista*, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." *(Emphases supplied)*

In the present case, to prove that indeed petitioner received the required PAN, respondent presented the following documents: (1) the PAN[49]; (2) the transmittal list of the BIR Revenue Region No. 7,[50] showing that the PAN with Registry No. 2032 was sent on March 18, 2011; and (3) the Certification[51] issued by the Postmaster of Mayamot Post Office-Antipolo City dated October 10, 2012, which reads:

> "This is to certify that Registered Letter No. 2032 addressed to Mr./Mrs. Desmichels Corporation of Zone 4 Little Valley Mambungan, Antipolo City was properly received by S/G Domingo on April 1, 2011.
>
> This certification is issued upon request of Atty. Amado Rey Pagarigan for whatever legal purpose it may serve.
>
> GIVEN this 10th day of October, 2012.
>
> (Sgd.) ROGELIO B. NACARIO
> Postmaster II"

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[49] Exhibit "2", docket, p. 347.
[50] Exhibit "7", docket, p. 267.
[51] Exhibit "9", docket, p. 269.

Respondent also presented the testimonies of the following witnesses: (1) Mr. Arnold C. Larrosa, to prove that he was the one who mailed the PAN and that it was duly served to and received by petitioner;[52] and (2) Mr. Joselito G. Aguirre[53], to show that he was the one who delivered the letter with Registry Receipt No. 2032. Mr. Aguirre also presented to the Court a copy of a portion of his Letter Carrier Delivery Book showing that Registered Letter No. 2032 was duly served to and received by petitioner through its Security Guard Alexander Domingo.

Based on the evidence and testimonies of the witnesses presented by respondent, the Court is convinced that the PAN was indeed received through registered mail by petitioner.

Petitioner likewise claims that the FAN was altered as the dates of issuance were merely superimposed on the documents, without proper authentication; thus, rendering the assessment void. However, it has already been stipulated by the parties that both the FAN and the FLD issued by the BIR bear the date April 14, 2011, which was the last day before the government's right to assess petitioner for any deficiency taxes for 2007 would lapse.[54] Hence, there is no more need to delve on the issue of alteration.

Whether there was valid protest on the FAN

Records show that the FAN and the FLD were received by petitioner on May 5, 2011 and that petitioner filed its protest to the FAN on July 4, 2011.[55] Thereafter, without the protest having been resolved, a PCL[56] dated February 22, 2012 was issued by the BIR signed by Assistant Revenue District Officer Jose G. Luna of RDO No. 45-Marikina.[57] Petitioner considered the issuance of the PCL as denial of its protest; and thus, on March 13, 2012, it filed a letter dated March 12, 2012 before respondent, appealing the implied denial of its protest and requesting the cancellation of the assessment and the PCL.[58] Subsequently, Assistant Revenue District Officer Jose G. Luna issued a FNBS[59] on March 12, 2012, informing petitioner that in case it still failed to pay the tax liabilities, respondent will be constrained to serve and execute the Warrant of Distraint and/or Levy and Garnishment to enforce collection.

Revenue Regulations No. 12-99, which implements the 1997 Tax Code provisions on assessments, i.e. Section 228, provides:

[52] Exhibit "11", docket, pp. 256-259.
[53] Exhibit "24", docket, pp. 313-317.
[54] Par. 7, Stipulated Facts, Pre-Trial Order, docket, p. 169.
[55] Pars. 2 and 3, Stipulated Facts, Pre-Trial Order, docket, pp. 168 to 169.
[56] Exhibit "26", docket, p. 352.
[57] Par. 4, Stipulated Facts, Pre-Trial Order, docket, p. 169.
[58] Par. 5, Stipulated Facts, Pre-Trial Order, docket, p. 169.
[59] Exhibit "27", docket, p. 353.

"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:

3.1.1 Notice of informal conference. – xxx

3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 Exceptions to Prior Notice of the Assessment. – xxx

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 jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment shall be void xxx*. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent to the taxpayer 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 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.

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 (3) days from date of receipt thereof** xxx.

xxx

xxx xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the commissioner or his duly authorized representative, the taxpayer may appeal to the Court of tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable; Provided, however, that if the taxpayer elevates his protest to the Commissioner within (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." *(Emphasis supplied)*

From the foregoing, it is clear that a taxpayer may protest the deficiency tax assessment within thirty (30) days from date of receipt of the FAN or FLD. However, if the taxpayer fails to file a valid protest against the FAN or FLD within said period, the deficiency tax assessment shall become final, executory, demandable, and unappealable to the CTA.

In this case, petitioner wrote a letter[60] to respondent dated May 25, 2011, requesting for a one-month extension of the period to file the protest. On June 16, 2011, petitioner requested for another time extension to file its protest.[61] Petitioner filed its protest on July 4, 2011. However, there is no showing that the BIR has granted petitioner's request for extension of time to file protest. The taxpayer's failure to dispute the assessment within the 30-day period constitutes a waiver of any defense which he could have set up against such assessment.

Jurisdiction of the Court

The following are the cases within the jurisdiction of the Court of Tax Appeals in Division[62]:

[60] Exhibit "I", docket, p. 233.
[61] Exhibit "J", docket, p. 234.
[62] Section 3, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as Amended.

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases *involving disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases *involving disputed assessments*, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code of other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx." (Emphasis supplied)

A disputed assessment arises when the taxpayer filed a protest on the FAN and Formal Letter on Demand. In the absence of protest, there is no disputed assessment to speak of which would confer jurisdiction on this Court.

Section 3.1.5 of Revenue Regulations No. 12-99 categorically describes a disputed assessment, as follows:

> "**3.1.5 Disputed Assessment** – The taxpayer or his duly authorized representative may **protest administratively against the aforesaid formal letter of demand and assessment notice** within thirty (30) days from the date of receipt thereof. xxx" (Emphasis supplied)

In *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.,*[63] the Supreme Court held that "for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof."

[63] G.R. No. 148389, December 9, 2005. Citations omitted.

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippines Islands*[64], the Supreme Court affirmed the decision of the Court of Tax Appeals that it has no jurisdiction on the case in view of the finality of the FAN.

> "The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments:
>
>> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

Since the assessments issued on April 14, 2011 are not disputed assessments and are already final and unappealable, therefore, the Court finds that it has no jurisdiction over the instant case.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu.[65]

From the foregoing, the Court finds that it is no longer necessary to discuss the other issues raised in this Petition.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[64] G.R. No. 134062, April 17, 2007. Citations omitted.
[65] Commissioner of Internal revenue vs. Leonardo S. Villa and the Court of Appeals, G.R. No. L-23988, Janaury 2, 2968.

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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