REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

INTERVET PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2693
(CTA Case No. 9909)

Present:

DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES *JJ.*

Promulgated:
OCT 07 2024 4:00 pm

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DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review* filed by petitioner **Commissioner of Internal Revenue (CIR/petitioner)** against respondent **Intervet Philippines, Inc. (Intervet/respondent)** assailing the Decision dated February 24, 2022[1] (assailed Decision), and the Resolution dated August 18, 2022,[2] (assailed Resolution) of the Court First Division[3] in CTA Case No. 9909, the dispositive portions of which read:

Assailed Decision:

> **WHEREFORE,** premises considered, the Petition for Review filed on August 16, 2018 by petitioner Intervet Philippines, Inc. is **GRANTED.**

[1] *Rollo*, pp. 32-50.
[2] *Rollo*, pp. 52-60.
[3] Penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Catherine T. Manahan and Marian Ivy F. Reyes-Fajardo.

Accordingly, the Formal Assessment Notice and Assessment Notice Nos. IT-ELA82524-14-17-1706, VT-ELA82524-14-17-1706, WE-ELA82524-14-17-1706, DS-ELA82524-14-17-1706, and MC-ELA82524-14-17-1706, all dated December 8, 2017, Preliminary Collection Letter dated June 22, 2018 and Final Notice Before Seizure dated July 6, 2018 are **CANCELLED AND SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed Income Tax, Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, and compromise penalties for TY 2014 in the aggregate amount of P49,107,493.90, inclusive of interest and increments arising from the Formal Assessment Notice and Assessment Notice Nos. IT-ELA82524-14-17-1706, VT-ELA82524-14-17-1706, WE-ELA82524-14-17-1706, DS-ELA82524-14-17-1706, and MC-ELA82524-14-17-1706, all dated December 8, 2017, Preliminary Collection Letter dated June 22, 2018 and Final Notice Before Seizure dated July 6, 2018 issued against petitioner Intervet Philippines, Inc. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

Assailed Resolution:

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Resolution dated 25 May 2022) and respondent's Motion for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner CIR is the officer duly appointed and empowered by law to act on national internal revenue tax assessments. It is being represented in the above-captioned case by the Legal Officers of the Legal Division, Bureau of Internal Revenue (BIR) Revenue Region No. 8A, Makati City, with office address at the 36th Floor Export Bank Plaza, Chino Roces Avenue cor. Sen. Gil Puyat Avenue, Makati City, where summons, pleadings, notices, and other processes of the Court may be served.[4]

Respondent Intervet is a corporation duly organized and existing under the laws of the Philippines with principal office at the 28th Floor Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila. It is a domestic corporation engaged in the wholesale of animal health products. It is a wholly owned subsidiary of a multinational corporation that is ultimately owned by Merck & Co., Inc., a corporation organized and domiciled in the United States

[4] III. Parties, *Petition for Review*, *Rollo* p. 11.

of America.[5] Petitioner is registered as a taxpayer under the jurisdiction of Revenue District Office (RDO) No. 050, which is under the direct supervision and control of Revenue Region No. 8 (Makati City).

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the Division Decision are as follows:[6]

> On August 4, 2015, [respondent] received a Letter of Authority (LOA) No. eLA201100082524 dated July 28, 2015 signed by Regional Director Jonas DP. Amora of Revenue Region No. 8 (RR8)-Makati City, authorizing Revenue Officer (RO) Michael Felipe and Group Supervisor (GS) Roderick Cantillana of RDO No. 050-South Makati to examine the books of accounts and other accounting records of petitioner **for all internal revenue taxes for the period January 1, 2014 to December 31, 2014** pursuant to Section 6 (A) and Section 10 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> On the same date, [respondent] also received LOA No. eLA201100078772 dated July 31, 2015 signed by Regional Director Amora, authorizing RO Mohaimen Marangit and GS Renan Plata of RR8-VAT Audit Team to examine the books of accounts and other accounting records of petitioner **for VAT for the period January 1, 2014 to June 30, 2014** pursuant to Revenue Memorandum Order (RMO) No. 20-2012 and the VAT Audit Program.
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> Thereafter, [respondent] received a Letter dated April 12, 2016 from Revenue District Officer Rosita U. Meniano informing it that in view of the transfer of RO Felipe to another revenue district office, RO Helalla M. Lao and GS Josalyn E. Tan are authorized to continue audit and investigation of [respondent's] books of accounts and other accounting records for all internal revenue taxes for TY 2014 pursuant to e-LOA No. 00082524 dated July 28, 2015 and Memorandum of Assignment (MOA) No. RR8-050-REA-040516-364 dated April 5, 2016.
>
> On January 26, 2017, [respondent] requested the BIR through a Letter of even date to Revenue District Officer Meniano for the revalidation of the LOA No. eLA201100082524.
>
> On March 20, 2017, [petitioner] issued a Subpoena *Duces Tecum* which was served to [respondent] by RO Lao on April 7, 2017.
>
> On May 12, 2017, [respondent] submitted its books of accounts and other documents covered by the Subpoena *Duces Tecum* with transmittal Letter dated May 10, 2017.
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> On November 23, 2017, [respondent] received the Preliminary Assessment Notice (PAN) dated November 22, 2017 finding it liable for

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5 Id.
6 *Rollo*, pp. 33-38.

deficiency IT, VAT, EWT, DST, and compromise penalties in the aggregate amount of P48,734,868.52.

On December 8, 2017, [respondent] filed a Protest to the PAN of even date.

On December 15, 2017, [respondent] received the Formal Assessment Notice (FAN) together with five (5) Assessment Notices, all dated December 8, 2017, assessing petitioner for deficiency IT, VAT, EWT, DST and compromise penalties in the aggregate amount of P49,107,493.90 for TY 2014, broken down as follows:

KIND OF TAX	BASIC TAX	SURCHARGE	INTEREST	TOTAL
IT	₱17,195,440.25	₱	₱9,516,380.63	₱26,711,820.88
VAT	11,144,362.72		6,656,085.13	17,800,447.85
EWT	871,166.13		525,086.44	1,396,252.57
DST	1,700,000.00	425,000.00	1,033,972.60	3,158,972.60
Compromise Penalty	40,000.00			40,000.00
			TOTAL	**₱49,107,493.90**

On January 15, 2018, [respondent] filed a Protest Letter dated January 12, 2018 against the FAN.

On March 16, 2018, [respondent] submitted relevant schedules and documents in support of its Protest Letter dated January 12, 2018.

On June 27, 2018, [respondent] received from the Revenue Region No. 8 Collection Division a Preliminary Collection Letter (PCL) dated June 22, 2018 stating that to avoid accumulation of interest and surcharges, it is requested that [respondent] pay the assessments within 10 days from receipt of the PCL.

On July 6, 2018, [respondent] filed with the Revenue Region No. 8 Collection Division a Letter dated July 2, 2018 raising its objections to the PCL, including the fact that its FAN protest is still pending resolution.

On July 17, 2018, [respondent] received the Final Notice Before Seizure (FNBS) dated July 6, 2018 issued by the Revenue Region No. 8 Collection Division demanding the settlement of [respondent's] tax liabilities within ten (10) days from notice otherwise there will be service and execution of Warrants of Distraint and/or Levy and Garnishment as well as referral of the case to the Revenue Region No. 8 Legal Division for filing of appropriate judicial action.

On July 25, 2018, [respondent] filed with the Regional Director of Revenue Region No. 8 a Letter of even date requesting for the grant of its request for reinvestigation and the withdrawal of the FNBS for being premature.

On August 16, 2018, [respondent] filed the present Petition for Review. The case was raffled to the CTA Second Division. Subsequently, the case was transferred to the CTA First Division pursuant to the Order dated September 24, 2018.

On October 4, 2018, within the extended period, [petitioner] filed his Answer, raising the following Special and Administrative Defenses: (i) the Court lacks jurisdiction over the Petition for Review; (ii) the FAN in this case is already final and executory since [respondent] failed to file protest against it within the 30-day period provided under Section 228 of the NIRC of 1997, as amended; (iii) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but that it is right; and, (iv) assessments are presumed correct and official functions are regularly done.

On October 15, 2018, [respondent] filed a Reply to [petitioner's] Answer stating that the protest letter to the FAN filed by petitioner with the BIR on January 15, 2018 is found in the BIR Records.

[Respondent's] Pre-Trial Brief was filed on January 18, 2019, while the [Petitioner's] Pre-Trial Brief was filed on January 22, 2019. The Pre-Trial Conference was held on January 24, 2019.

On January 18, 2019, [respondent] filed a Motion for Production of Documents.

On January 23, 2019, [petitioner] filed a Motion for Leave of Court to Amend or Modify the Answer dated September 21, 2018 (with Amended Answer).

During the Pre-Trial Conference, the Court granted [respondent's] Motion for Production of Documents and also directed the parties to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) pursuant to the Supreme Court Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

On February 8, 2019, [respondent] filed a Motion to Suspend Referral of Case to the Philippine Mediation Center-Court of Tax Appeals and Further Proceedings.

On March 13, 2019, the Court issued a Resolution denying both [petitioner's] Motion for Leave of Court to Amend or Modify the Answer dated September 21, 2018 (with Amended Answer) and [respondent's] Motion to Suspend Referral of Case to the Philippine Mediation Center-Court of Tax Appeals and Further Proceedings. The Court also directed the parties to appear before the PMC-CTA on April 1, 2019 and suspended the proceedings on the case for thirty (30) days starting from the date of the preliminary mediation conference.

On May 15, 2019, the Court received a Request for Extension from the mediator, Ret. Justice Rodrigo V. Cosico, requesting for a final extension of the period allowed for the settlement of the case for thirty (30) days or until June 21, 2019. This was granted in the Resolution dated June 4, 2019.

On June 24, 2019, the Court received the Mediator's Report signed by Ret. Justice Cosico declaring the subject mediation unsuccessful.

On July 15, 2019, the parties filed a Joint Motion to Admit Attached Joint Stipulation of Facts and Issues and to Suspend Court Proceedings during the Pendency of [Petitioner's] Reinvestigation. In the Resolution dated July 31, 2019, the Court admitted the parties Joint Stipulation of Facts and Issues but denied the Joint Motion to Suspend Court Proceedings during the Pendency of [Petitioner's] Reinvestigation.

On September 9, 2019, the Court issued the Pre-Trial Order.

Upon motion of [respondent], the Court commissioned Katherine O. Constantino as Independent Certified Public Accountant (ICPA) on December 5, 2019.

During trial, [respondent] presented testimonial and documentary evidence. It presented the following witnesses: Estela B. Valenzuela, petitioner's Finance Controller; and, Katherine O. Constantino, the Court-commissioned ICPA.

The Formal Offer of Evidence for [Respondent] Intervet Philippines, Inc. was filed on February 3, 2020. [Respondent's] exhibits were admitted in evidence in the Resolution dated June 4, 2020, save for Exhibits "P-128" to "P-131" and "P-156" for failure to present their originals for comparison.

On September 25, 2020, [respondent] filed a Manifestation and Motion (To Strike Out Testimony from the Records) praying for the Court to deny the admission of the testimonies of ROs Ominsahri S. Botawan and Helalla M. Lao, or portions thereof; and, strike out from the records of this case the Judicial Affidavits of ROs Botawan and Lao. This was denied by the Court in the Resolution dated November 16, 2020.

In the Order dated November 17, 2019, [petitioner's] right to present evidence was deemed waived considering the absence of the counsel for [petitioner] despite a second call during the hearing for the presentation of [petitioner's] witnesses.

On December 15, 2020, [petitioner] filed a Motion for Reconsideration of the Order dated November 17, 2020. This was denied by the Court in the Resolution dated February 23, 2021.

The Memorandum for the [Respondent] was filed on December 17, 2020, while [petitioner] failed to file his memorandum. Thereafter, the case was submitted for decision on June 28, 2021.

As earlier mentioned, the Court First Division ruled in favor of respondent Intervet and granted the *Petition for Review*. Petitioner's *Motion for Reconsideration* was denied for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Aggrieved, petitioner CIR filed the instant *Petition for Review* through registered mail on September 29, 2022. Upon order of the Court,[7] respondent filed its *Comment (On the Petition for Review of the Commissioner of Internal Revenue dated 29 September 2022)* on December 5, 2022.[8]

Thereafter, the case was referred to mediation, thereby suspending the proceedings for thirty (30) days.[9] Upon the filing of *Request for Extension* by the Mediator of the PMC-CTA, the Court granted the mediator and the parties a final extension of thirty (30) days, or until June 23, 2023, to complete the mediation proceedings.[10]

On July 26, 2023, the parties filed a *Joint Manifestation and Motion to Suspend Proceedings* praying for another thirty (30)-day extension, or until August 25, 2023, for petitioner CIR to review, respond or approve respondent's Intervet's Proposal for Compromise Agreement.

The parties' *Joint Manifestation and Motion to Suspend Proceedings* was denied by the Court in the Resolution dated September 11, 2023,[11] thus the instant case was submitted for decision.

On September 25, 2023, the Court noted the Mediator's Report submitted by Appellate Mediator, Ret. Justice Amelia R. Cotangco-Manalastas, on September 18, 2023, stating that unsuccessful mediation was taken on this case.

ISSUES

In assailing the Decision and Resolution of the Court First Division, petitioner raises the following grounds for the allowance of the Petition for Review:[12]

A. The CTA First Division lacks jurisdiction as respondent should have filed an appeal before the Court Division within thirty (30) days from the date of receipt of the Preliminary Collection Letter (PCL), and not from the Final Notice Before

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[7] Resolution dated November 22, 2022, *Rollo* pp. 94-95.
[8] *Rollo*, pp. 96-107.
[9] Resolution dated January 19, 2023, *Rollo*, pp. 111-112.
[10] Resolution dated June 9, 2023, *Rollo*, pp. 116-117.
[11] *Rollo*, pp. 125-127.
[12] Petition for Review, *Rollo*, p. 15.

Seizure (FNBS), considering that the PCL was already the final decision of the CIR appealable to this Honorable Court;

B. The CTA First Division, in violation of prevailing jurisprudence, erred in ruling that the PCL issued before an FNBS is not a CIR's Final Decision already appealable to this Honorable Court. Consequently, the CTA First Division allowed the respondent to appeal belatedly from an FNBS and disregarding as reckoning point of appeal the earlier PCL issued and received by respondent;

C. Considering the respondent already lost its appeal because it failed to appeal timely from the receipt of the PCL, respondent had no right to contest the validity of an assessment. As such, it is erroneous for the CTA First Division to assume jurisdiction and rule that the assessment is void because the Revenue Officer (RO) and Group Supervisor (GS) lack authority pursuant to a Letter of Authority (LOA); and,

D. The Honorable Court lacks jurisdiction over this Petition for Review considering the Formal Assessment Notice (FAN) was already final and executory when respondent filed its Petition for Review in CTA Case No. 9909.

CIR's arguments

In support of the first two (2) grounds, petitioner avers that this Court has previously ruled that the PCL is the CIR's final decision and should be the reckoning point of an appeal. The PCL is already a demand letter or final decision of the CIR that is appealable to this Court.

Petitioner posits that the appeal from the CIR's final decision must be made at the earliest opportunity, that is within thirty (30) days from receipt of the PCL. Should the taxpayer be allowed to choose which of the CIR's subsequent reply would be the reckoning point of appeal, then a FAN will never reach its finality. For petitioner, the PCL is the rational final reply of the CIR indicating his denial of the taxpayer's protest, and the subsequently issued FNBS is but a confirmation that a FAN has attained its finality. Respondent's Petition for Review was, therefore, time-barred since the filing of the same was reckoned from the receipt of the FNBS and not the PCL.

Following his theory that the petition for review was belatedly filed, petitioner contends that the Court First Division lacked jurisdiction to rule that the assessment is void for lack of authority of the ROs who conducted the audit. Respondent had no right to contest the validity of the assessment as the same had already attained finality.

Lastly, petitioner still insists that, per BIR Records, respondent received the FAN on December 13, 2017. Counting thirty (30) days therefrom, respondent had until January 12, 2018 to file protest under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended. Thus, when respondent filed its protest on January 15, 2018, the FAN had already become final and executory.

Intervet's counter-arguments

Respondent points out that petitioner did not dispute the findings of the Court First Division that the tax assessments are void *ab initio* because the RO and GS who continued the audit and examination of respondent's books of accounts were not authorized by a valid LOA.

Respondent likewise emphasizes that the arguments petitioner raised in the *Petition for Review* are the same contentions raised in his Motion for Reconsideration, which were already addressed by the Court First Division. The instant *Petition for Review* must, therefore, be denied as it does not raise any new, cogent or substantial ground to warrant the modification of the assailed Decision and Resolution of the Court First Division.

RULING OF THE COURT *EN BANC*

The instant *Petition for Review* is bereft of merit.

At the core of this petition is the lack of jurisdiction of the Court First Division in taking cognizance of respondent's appeal. Petitioner vehemently argues that the thirty (30)-day appeal period must be reckoned from respondent's receipt of the PCL, instead of the FNBS.

Petitioner's contention is erroneous. On this score, we quote with affirmance the ruling of the Court First Division:[13]

> ***The Court has jurisdiction over the Petition for Review***
>
> The CTA is a court of special jurisdiction. It can only take cognizance of such matters as are clearly within its jurisdiction. Section 7

[13] *Rollo*, pp. 40-43.

of Republic Act (RA) No. 1125, as amended, defines the jurisdiction of the CTA, *viz.*:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue; x x x" *(Boldfacing in the original)*

On the other hand, under Section 11 of RA No. 1125, as amended, in relation to Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

Based on the foregoing, this Court has exclusive appellate jurisdiction to take cognizance of decisions involving disputed assessments and the concerned taxpayer or party adversely affected by a decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision.

In the present case, petitioner filed the Petition for Review to appeal the assessments against it for deficiency IT, VAT, EWT, DST and compromise penalties for TY 2014 after receiving on July 17, 2018 the FNBS dated July 6, 2018.

In *Commissioner of Internal Revenue vs. Isabela Cultural Corporation (Isabela case)*, the Supreme Court held that the FNBS which indicates that the taxpayer was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy, constitutes the CIR's final decision, *viz.*:

> "Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.
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> In the light of the above facts, **the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was**

> **being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.** How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?" *(Boldfacing in the original)*

In light of the foregoing, it is evident that the issuance of the subject FNBS constitutes the final decision of respondent that is appealable before this Court.

In this case, as in the *Isabela case*, the FNBS dated July 6, 2018 stated that petitioner was being given a last opportunity to settle its tax liabilities; otherwise, the BIR shall serve and execute the Warrant of Distraint and/or Levy and Garnishment it already prepared to enforce collection of petitioner's account, to wit:

> "On various dates this office sent you a letter requesting the settlement of the above account. However, despite the considerable length of time given to you, we have not been favored with any reply.
>
> In this connection, we would like to inform you that we are again giving you the **last opportunity** to make the necessary settlement of the above stated tax liability/ies within ten (10) days from receipt of this notice. Should we fail to hear from you within this period, this office, much to our regret, will be constrained to **serve and execute the Warrant of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account.** Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for filing of appropriate judicial action.
>
> Please give this matter your preferential attention.
>
> Very truly yours,
> (Signed)
> ALICE S.A GONZALES
> Chief, Collection
> Division"
> *(Boldfacing in the original)*

Applying the *Isabela case*, the FNBS issued in this case constitutes as the final decision of CIR on petitioner's protest, which is appealable to the CTA.

Considering that petitioner received the FNBS dated July 6, 2018 on July 17, 2018, it had thirty (30) days therefrom or until August 16, 2018 within which to appeal the final decision to the CTA. The Petition for Review was therefore timely filed on August 16, 2018.

Respondent argues that the Court has no jurisdiction to take cognizance of the Petition for Review. He contends that the FAN dated December 8, 2017 had already become final and executory since petitioner

> failed to file a protest against it within the thirty (30)-day period provided under Section 228 of the NIRC of 1997, as amended.
>
> Contrary to respondent's argument, the FAN dated December 8, 2017 did not yet become final and executory. A perusal of the records shows that petitioner received the FAN dated December 8, 2017 on December 15, 2017. Counting thirty (30) days therefrom, petitioner had until January 14, 2018 within which to file its protest against the FAN. January 14, 2018, however, fell on a Sunday, thus petitioner had until January 15, 2018. Petitioner's protest against the FAN was timely filed on January 15, 2018.
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> Considering that petitioner timely filed its Petition for Review and that the FAN dated December 8, 2017 has not yet become final and executory, the Court has jurisdiction over the present case.

The crux of the controversy in this case could have been avoided had petitioner issued the Final Decision on Disputed Assessment, or at least conveyed in categorical terms that such was his final decision.

The Court agrees with petitioner's view that a taxpayer should not be able to choose, which of the subsequent replies would be the reckoning point of the appeal, otherwise the FAN will not reach its finality. It is precisely for this reason that our legal system urges the CIR to indicate to the taxpayer in clear and unequivocal language what constitutes their final determination of the disputed assessment in order for the taxpayer to know when its right to appeal accrues. In *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*,[14] the Supreme Court elucidated the importance of indicating the "final decision" that could be the subject of appeal, thus:

> If the Commissioner will deny the protest, Revenue Regulations No. 12-99 expressly provides that:
>
>> *The decision of the Commissioner or his duly authorized representative shall*: (a) *state* the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, in which case, the same shall not be considered a decision on a disputed assessment; and (b) *that the same is his final decision*. (Emphasis in the original)
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> The foregoing rule prescinds from this Court's dictum in the old case of *Surigao Electric Co., Inc. v. Court of Tax Appeals*, and reiterated in *Commissioner of Internal Revenue v. Union Shipping Corp.*, **that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes their final determination of the disputed assessment in order for the taxpayer to know when its right to appeal accrues.** Thus:
>
>> [W]e deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment

[14] G.R. No. 225809, March 17, 2021.

> questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this *indicium* indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.

In *Surigao*, an exchange of correspondence between Surigao Electric Co. and the Commissioner ensued after the former protested a deficiency franchise tax assessment. The controversy culminated in a revised assessment dated April 29, 1963, which was received by Surigao Electric Co. on May 8, 1963. It requested a recomputation of the revised assessment in a letter dated June 6, 1963. On July 16, 1963, Surigao Electric Co. received the Commissioner's letter denying the request for recomputation. On August 1, 1963 the taxpayer appealed to the Court of Tax Appeals, which dismissed the appeal since it was time-barred. This Court affirmed the dismissal of the appeal and held that the Commissioner's letter dated April 29, 1963 embodied the decision or ruling appealable to the tax court. We explained:

xxx xxx xxx

It was under the factual backdrop of *Surigao Electric Co., Inc.* that this Court admonished Commissioner to indicate in clear and unequivocal language what constitutes final action on a disputed assessment to avoid repeated requests for reconsideration by the taxpayer. This is also to avoid the taxpayer grope in the dark as to which communication or action from the Bureau of Internal Revenue may be the decision appealable to the tax court.

At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, this Court has considered this as an implied denial. The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it was notified of the warrant or collection suit. (Emphasis supplied)

For instance, in *Commissioner of Internal Revenue v. Isabela Cultural Corporation (ICC)*, ICC was assessed for deficiency income tax by the Commissioner. It moved for reconsideration and filed a letter attaching certain documents in support of its protest. The Commissioner sent a "Final Notice Before Seizure" to ICC demanding payment of the subject assessment within 10 days from receipt thereof, and that failure on its part to do so would constrain the Commissioner to collect the tax assessed through summary remedies of distraint or levy. The notice, however, did not contain a categorical statement that the Commissioner has denied ICC's motion for reconsideration. ICC, nonetheless, filed a petition for review with the Court of Tax Appeals alleging that the final notice of seizure was the Commissioner's final decision. This Court ruled that a final demand from the Commissioner reiterating the immediate payment of a tax deficiency previously made, is tantamount to a denial of the protest. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals.

> In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?
>
> xxx xxx xxx

Here, the Court cannot lend credence to petitioner's assertion that the thirty (30)-day appeal period must be reckoned from the receipt of the PCL. The PCL did not contain a tenor of finality, as opposed to the FNBS. The PCL was worded as follows:

> xxx xxx xxx
>
> To avoid accumulation of interest and surcharges, it is requested that you pay the aforesaid tax liability/ies within ten (10) days from receipt hereof, at the Collection Division 3/F BIR Building No. 313 Sen. Gil Puyat Avenue, Makati City. However, if payment had already been made, please send or bring to us your copies of the receipts of payment together with this letter to be the basis for cancelling/closing of your tax liability/ties. Otherwise, we shall be constrained to enforce the collection thereof, through the administrative summary remedies [provided for by the] law, without further notice.

Whereas, the FNBS was couched in this tenor:

> xxx xxx xxx
>
> In this connection, we would like to inform you that we are again **giving you the last opportunity to make the necessary settlement of the above states tax liability/ties within ten (10) days from receipt of the notice.** Should we fail to hear from you within this period, this office, much

> to our regret, will be constrained to serve and execute the Warrant of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account. Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for filing of appropriate judicial action. (Emphasis supplied)

Having settled that respondent's *Petition for Review* was timely filed, the Court in Division had jurisdiction to rule on the validity of the assessment. At this juncture, the Court upholds the ruling of the Court First Division declaring the assessment against respondent void for lack of authority of the ROs who conducted the audit. As respondent aptly pointed out, petitioner is not assailing the Court First Division's ruling on the validity of the assessment, rather the assigned error is centered on the lack of jurisdiction. There is, thus, no reason for the Court to elaborate on the aspect of validity of the assessment.

Petitioner's last assigned error that the FAN was already final when respondent filed the Petition for Review before the Court in Division is specious. Petitioner still claims that respondent received the FAN on December 13, 2017, hence, the protest filed on January 15, 2018 was filed out of time. Contrary to petitioner's claim, the parties expressly stated in their *Joint Stipulation of Facts and Issues* that respondent received a copy of the FAN on December 15, 2017. Having already stipulated on the date of receipt of the FAN, petitioner's contention finds no basis and must accordingly be given scant consideration.

All told, there is no cogent reason for the Court to disturb the findings and ruling of the Court First Division.

WHEREFORE, the instant **Petition for Review** is **DENIED** for lack of merit. The Decision dated February 24, 2022 and the Resolution dated August 18, 2022 in CTA Case No. 9909 are hereby **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(On Official Business)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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