REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

*En Banc*

**ASIA RENAL CARE PHILS., INC.,**
*Petitioner,*

**CTA *EB* NO. 1502**
(CTA Case No. 8832)

-*versus*-

Present:
**DEL ROSARIO**, *P.J.*,
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN**, *and*
**MANAHAN**, *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

Promulgated:
MAY 30 2018 2:17 p.m.

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# *RESOLUTION*

***BAUTISTA, J.:***

For resolution is petitioner's Motion for Reconsideration (Re: Decision dated January 4, 2018) ("Motion for Reconsideration") filed on February 13, 2018; with no comment from respondent despite notice.

On January 4, 2018, the Court *En Banc* promulgated a Decision, disposing of the case as follows:

> **WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Resolutions dated May 5, 2016 and August 10, 2016 are hereby **AFFIRMED.**

**SO ORDERED.**[1]

In the assailed Decision, the Court *En Banc* found that the assessments attained finality for petitioner's failure to file a valid protest; that respondent is not estopped from questioning the jurisdiction of the Court in Division; and that the Court in Division validly dismissed the Petition for Review filed before it.

On February 13, 2018, petitioner's Motion for Reconsideration was filed in which it avers that respondent's assessments are null and void because the revenue officers who caused the issuance of the assessment did not have the authority to examine its books of accounts for calendar year ("CY") 2010; that the Court of Tax Appeals ("CTA") First Division ("Court in Division") has jurisdiction over the present case under the term "other matter" pursuant to *Section 7(a)(1) of Republic Act ("RA") No. 1125* and *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*; that respondent's right to assess petitioner for deficiency tax has prescribed; and that respondent is estopped from assailing the jurisdiction of the Court in Division.

On March 15, 2018, the Court *En Banc* ordered respondent to file his comment. This Resolution was received by the BIR Legal Division of Revenue Region No. 7 on March 26, 2018 and by the Office of the Solicitor General on April 10, 2018. Therefore, at the latest, respondent had until April 20, 2018 to file his comment.

On April 26, 2018, the Judicial Records Division issued a Records Verification Report stating that respondent failed to file his comment to petitioner's Motion for Reconsideration.

In view of the foregoing antecedents, the Court *En Banc* shall now rule on petitioner's Motion for Reconsideration, and finds no merit therein.

Petitioner's ground regarding estoppel was already exhaustively discussed in the Court *En Banc*'s Decision. Below are the arguments of petitioner, as summarized in the assailed Decision:

***Petitioner's Arguments***

[1] Emphases retained.

> Petitioner avers that the deficiency tax assessments did not attain finality because a request for reconsideration was timely filed; that <u>respondent is estopped from questioning the jurisdiction of the Court in Division over petitioner's judicial protest of the deficiency tax assessments</u>; that the dismissal of the Petition for Review based on the Motion to Dismiss was not supported by law and jurisprudence; and that the ends of justice will be served if the Court in Division assumed jurisdiction over the case to examine the timeliness and propriety of the deficiency tax assessments.[2]

As to petitioner's claim that the assessments are void since the revenue officers who caused the issuance of the assessment did not have authority to examine its books, the Court begs to differ.

At this point, the Court *En Banc* finds the need to lift the relevant portions of its Decision, to wit:

> **The assessments attained finality for petitioner's failure to file a valid protest.**
>
> Petitioner claims that the deficiency tax assessments did not attain finality because a request for reconsideration was timely filed. Even if the Court *En Banc* assumes that petitioner's Alleged Protest Letter was filed within the prescribed period of thirty (30) days from receipt of the FANs, the Court *En Banc* does not agree that said letter can be considered a valid request for reconsideration.
>
> *Section 228 of the 1997 NIRC* clearly provides that an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof in such form and manner as may be prescribed by implementing rules and regulations - which is specifically *Section 3.1.4 of RR No. 12-99*. The latter requires <u>the following to be stated in the protest, otherwise, the same shall be considered void and without force and effect: *(1)* the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, *(2)* date of the assessment notice, and *(3)* the applicable law, rules and</u>

[2] Emphases retained; underscoring ours.

regulations, or jurisprudence on which his/her/its protest is based.

It is undisputed that the Alleged Protest Letter states only the following:

> We received the tax assessment notice to Asia Renal Care Phils. Inc. with TIN: 200-547-897-000 dated January 15, 2014 last January 20, 2014. The 1708 with demand number 39-8150-10 amounting to Php24,593,630.95 is for taxable year 2010.
>
> We would like to contest such assessment and would like to request to be given 60 days to prepare supporting documents.
>
> Please find enclosed assessment notice for your reference.

While petitioner complied with requirement number 2, *i.e.* stating the date of issuance of the FANs, it failed to indicate whether the protest is in the nature of a reconsideration or a reinvestigation; and if it is the latter, it also did not specify the pieces of evidence it intends to present. Moreover, no legal basis was provided to support the alleged protest. In view of petitioner's non-compliance with the relevant provision of law and regulations, petitioner's purported protest is void. Instead of filing the above letter expressing its interest to contest the assessment, petitioner should have filed with the BIR an actual protest letter in accordance with *Section 228 of the 1997 NIRC*, as implemented by *Section 3.1.4 of RR No. 12-99*.

This goes without saying that petitioner only had thirty (30) days from receipt of the FANs to file a valid protest thereto. Due to the lapse of the prescribed period without a proper protest being filed with the BIR, petitioner's right to question the assessment has prescribed under *Section 228 of the 1997 NIRC*.

Once an assessment has become final for failure of the taxpayer to file a protest within the time allowed, the validity or correctness of the assessment may no longer be questioned on appeal. Accordingly, the Court in Division did not err in

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> ruling that the assessments attained finality for petitioner's failure to file a valid protest.[3]

As found by the Court *En Banc*, petitioner failed to file a valid protest, making the validity of the assessment beyond question. The proper recourse of petitioner, after receiving an assessment, was to dispute the same by filing a valid administrative protest within thirty (30) days from receipt thereof, which it failed to do since it never indicated in its alleged protest letter whether it is in the nature of a reconsideration or a reinvestigation; and the pieces of evidence it intends to present, in case of the latter. These lapses render the alleged protest void and without force and effect, pursuant to *Section 3.1.4 of Revenue Regulations No. 12-99*. Instead, it filed a Petition for Review with the Court in Division. Thus, the dismissal of the Petition for Review by the Court in Division was proper. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed means that the validity or correctness of the assessment may no longer be questioned on appeal.[4]

Moreover, petitioner cannot seek refuge under the doctrine in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[5] regarding the authority of the revenue officers, as in that case, the taxpayer timely filed a valid protest and forwarded supporting documents to the Commissioner of Internal Revenue ("CIR"), which is not the case here. Hence, the facts of the said case are not on all fours with the ones in the case at bar, making it inapplicable.

Petitioner likewise cited the case of *Commissioner of Internal Revenue v. Hambrecht and Quist*[6] *("Hambrecht")* in claiming that the Court has jurisdiction over the case under the term "other matters." The Court *En Banc* does not agree therewith. In the *Hambrecht* case, the Supreme Court stated as follows:

> To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. <u>However, the validity of the assessment itself is a separate and distinct</u>

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[3] Underscoring ours.
[44] *Commissioner of Internal Revenue v. Hambrecht and Quist,* G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[5] G.R. No. 222743, April 5, 2017.
[6] G.R. No. 169225, November 17, 2010, 635 SCRA 162.

> issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.[7]

In its Decision, the Court *En Banc* stated that the Court in Division correctly dismissed the Petition for Review brought before it, instead of deciding the case on the merits since it has no jurisdiction over the subject matter for want of a valid protest filed by petitioner.

It must be noted, however, that unlike the present case, which prays for the cancellation of assessments issued against petitioner, the *Hambrecht* case seeks for the cancelation the assessment issued against the taxpayer for failure of the CIR to enforce collection within the period allowed by law. The prescription being referred to in the above-quoted paragraph speaks of the CIR's right to collect and not to assess. What is at issue on hand is not connected to collection and revolves around assessment. What the Supreme Court was saying in the *Hambrecht* case is that while the assessment cannot be questioned anymore, the issue of whether the CIR has the right to collect is still within the jurisdiction of the CTA. This pronouncement does not discount the fact that the assessment still attained finality and is beyond question.

**WHEREFORE**, premises considered, the petitioner's Motion for Reconsideration (Re: Decision dated January 4, 2018) is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

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[7] Underscoring ours.

***WE CONCUR:***

(I maintain my Dissenting Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

(On Leave)
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice