REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NANOX PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8433**
- versus -	Present: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 24 2016 11:55 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

This is a Petition for Review[1] filed by Nanox Philippines, Inc. on February 27, 2012 to seek the cancellation and nullification of the Assessment Notices, the Formal Letter of Demand, and the related Preliminary Collection Letter and Final Notice Before Seizure issued against it for alleged deficiency expanded withholding tax (EWT), value-added tax (VAT), final withholding tax (FWT) on royalties, and fringe benefit tax (FBT) for the fiscal year (FY) ended March 31, 2007, in the aggregate amount of Twenty-Two Million Twenty-Nine Thousand Nine Hundred Forty-Three Pesos and 91/100 (₱22,029,943.91), inclusive of surcharges, interest, and penalties.

The Facts

Petitioner Nanox Philippines, Inc. is a corporation duly registered with the Securities and Exchange Corporation (SEC) under SEC Registration No.

[1] Docket, vol. 1, pp. 6-41.

A199909352 dated June 15, 1999,[2] the primary purpose of which is to manufacture, process, sell on wholesale basis and export Liquid Crystal Display (LCD) and fiber optics.[3] It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 202-964-165-000.[4] Petitioner is also a duly registered Clark Special Economic Zone (CSEZ) enterprise and governed by Clark Development Corporation (CDC) rules and regulations.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 22, 2007, petitioner received Letter of Authority[6] (LOA) No. 00003651 dated October 4, 2007 from respondent authorizing the examination of its books of accounts and other accounting records for the FY ended March 31, 2007.[7]

On June 2, 2009, petitioner received a Notice of Informal Conference[8] from the Revenue District Office (RDO) No. 21 of the BIR inviting petitioner or its duly authorized representative to an informal conference to discuss the preliminary results of the tax audit.[9]

In reply thereto, petitioner submitted various supporting documents through its letters to RDO No. 21 dated June 8, 2009[10], June 29, 2009[11], July 17, 2009[12], and July 24, 2009[13] to support its position relative to the cancellation of the findings contained in the attached preliminary report of investigation.

On November 9, 2009, respondent issued a letter informing petitioner that he will reiterate the assessment since the documents submitted by petitioner were found to be insufficient. Respondent likewise requested petitioner to attend an informal conference within fifteen (15) days upon receipt of the November 9, 2009 letter.[14]

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2 Exhibits "A" and "A-1", docket, vol. 2, pp. 681-702.
3 Par. 1, Facts, Pre-Trial Order, docket, vol. 1, p. 271.
4 Exhibit "C", docket, vol. 2, p. 705.
5 Par. 3, Facts, Pre-Trial Order, docket, vol. 1, p. 271; Exhibit "B", docket, vol. 2, pp. 703-704.
6 Exhibit "D", docket, vol. 2, p. 706.
7 Par. 6, Facts, Pre-Trial Order, docket, vol. 1, p. 272.
8 Exhibits "E", "E-1", and "E-2", docket, vol. 2, pp. 707-709.
9 Par. 7, Facts, Pre-Trial Order, docket, vol. 1, p. 272.
10 Exhibit "F", docket, vol. 2, p. 710.
11 Exhibit "G", docket, vol. 2, p. 711.
12 Exhibit "H", docket, vol. 2, p. 712.
13 Exhibit "I", docket, vol. 2, p. 713.
14 Par. 8, Facts, Pre-Trial Order, docket, vol. 1, p. 272; Exhibit "J", docket, vol. 2, p. 714.

Petitioner requested respondent, through its letter dated November 23, 2009[15], for clarification of the specific issues mentioned in respondent's letter dated November 9, 2009.

On February 11, 2010, respondent issued a Preliminary Assessment Notice (PAN)[16], a copy of which was received by petitioner on March 15, 2010[17]. The PAN assessed petitioner for deficiency VAT on sales of scrap, EWT, FWT on royalty payments, and FBT in the total amount of ₱21,564,547.66.

In reply to the PAN, petitioner filed a letter dated March 31, 2010[18], seeking further clarification on the specific issues contained in the said PAN.

Thereafter, on April 22, 2010, petitioner received from respondent a Formal Letter of Demand covering Assessment Notice No. 021-120700001710346 dated March 24, 2010[19] (FLD/FAN), which reiterated the same findings and amount of assessment with updated interest contained in the PAN. The details of the alleged deficiencies in the total amount of ₱22,029,943.91 are as follows:

Expanded Withholding Tax	₱ 20,014,912.71
Value-added Tax	621,776.43
Final Withholding Tax on royalties	13,498.19
Fringe Benefit Tax	1,379,756.58
TOTAL	**₱22,029,943.91**

On May 17, 2010, petitioner received from BIR Revenue Region No. 4 a Tax Verification Notice[20] (TVN) dated May 12, 2010, informing petitioner that Revenue Officer James Suarez has been authorized to verify the supporting documents and/or pertinent records relative to petitioner's internal revenue taxes for the taxable period April 1, 2006 to March 31, 2007, and also requesting the submission of certain documents stated therein.[21]

In response to the TVN, petitioner filed a letter dated May 17, 2010[22], requesting an extension period of at least one (1) month within which to prepare and submit the documents requested in the TVN. The BIR Revenue District

[15] Exhibit "K", docket, vol. 2, pp. 715-716.
[16] Exhibit "L", docket, vol. 2, pp. 717-723; Exhibit "R-4", BIR Records, pp. 1060-1071.
[17] Exhibit "L-1", docket, vol. 2, p. 717.
[18] Exhibit "M", docket, vol. 2, p. 724.
[19] Exhibit "N", docket, vol. 2, pp. 725-731; Exhibits "R-5-a", "R-5-b", and "R-5-c", BIR Records, pp. 1072-1085.
[20] Exhibits "O" and "O-1", docket, vol. 2, p. 732.
[21] Par. 11, Facts, Pre-Trial Order, docket, vol. 1, p. 273.
[22] Exhibits "P" and "P-1", docket, vol. 2, p. 733; Exhibit "R-9", BIR Records, p. 1096.

Office denied the request for extension through its letter[23] dated June 8, 2010, a copy of which was received by petitioner on June 23, 2010.

Respondent then issued the Final Decision on Disputed Assessment[24] (FDDA) dated August 17, 2010, which was received by petitioner on September 1, 2010. It stated that the Formal Letter of Demand dated March 24, 2010 has become final in view of petitioner's failure to submit the necessary supporting documents to refute the findings of the previous examiner.

Petitioner then elevated the matter to the Office of the Commissioner by filing a Request for Reconsideration[25] with said Office on October 1, 2010.

While the matter was pending before the Office of the Commissioner, the Collection Division of BIR Revenue Region No. 4 issued a Preliminary Collection Letter[26] dated October 26, 2010, a copy of which was received by petitioner on November 11, 2010, requesting payment of the assessed deficiency taxes for FY 2007.

In response thereto, petitioner filed a reply letter[27] on November 18, 2010, requesting the suspension of the proceedings for the enforcement of the payment of the disputed assessment pending respondent's resolution of petitioner's October 1, 2010 request for reconsideration.

Thereafter, respondent issued a Final Notice Before Seizure[28] on November 9, 2010, a copy of which was received by petitioner on February 9, 2011.

On February 16, 2011, petitioner filed a letter[29] requesting that the Final Notice Before Seizure be held in abeyance and that no collection through summary remedies of Warrant of Distraint and Levy and/or Garnishment be enforced until respondent Commissioner has finally resolved the request for reconsideration dated October 1, 2010.

However, on January 26, 2012, petitioner received a copy of the Final Decision[30] issued by respondent dated December 15, 2011, denying its request for reconsideration and reiterating the arguments as well as the details of the assessment as stated in the FDDA.

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[23] Exhibit "X", docket, vol. 2, p. 759; Exhibit "R-10", BIR Records, p. 1097.
[24] Exhibits "Q" and "Q-1", docket, vol. 2, pp. 734-735; Exhibit "R-13", BIR Records, pp. 1103-1104.
[25] Exhibits "R" and "R-1", docket, vol. 2, pp. 736-754.
[26] Exhibits "S" and "S-1", docket, vol. 2, p. 755.
[27] Exhibits "T" and "T-1", docket, vol. 2, p. 756.
[28] Exhibit "U", docket, vol. 2, p. 757.
[29] Exhibits "V" and "V-1", docket, vol. 2, p. 758.
[30] Exhibit "W", BIR Records, pp. 1156-1163.

Consequently, petitioner filed the instant Petition for Review[31] before this Court on February 27, 2012.

Within the extended time granted by the Court,[32] respondent filed his Answer[33] on April 30, 2012 and interposed as his main defense that the Court has no jurisdiction to take cognizance of the instant petition considering that the assessment has become final, executory and demandable for failure of petitioner to validly protest the assessment.

The Pre-Trial Conference was set on June 8, 2012.[34] Thus, the Respondent's Pre-Trial Brief[35] was filed on June 4, 2012; while the Pre-Trial Brief (of Petitioner Nanox Philippines, Inc.)[36] was filed on June 5, 2012.

On October 12, 2012, upon motion of petitioner,[37] the Court commissioned Ms. Annalyn B. Artuz as the Independent Certified Public Accountant (CPA) for the case.[38]

On December 20, 2012, the Court issued the Pre-Trial Order[39] which terminated the pre-trial.

During trial, petitioner presented the following witnesses: Ms. Elsa B. Gueco[40], its Finance Senior Supervisor; Ms. Annalyn B. Artuz[41], the Court-commissioned Independent CPA; and Ms. Ruby Chavez-Mandria[42], its General Manager for Human Resource and Finance.

Petitioner filed its Formal Offer of Evidence[43] on November 26, 2013. In the Resolution[44] dated January 21, 2014, the Court admitted petitioner's Exhibits "A", "A-1", "B", "C", "D", "E", "E-1", "E-2", "G", "H", "I", "J", "K", "K-1", "M", "N", "O", "O-1", "Q", "R", "R-1", "S", "T", "T-1", "U", "W", "Y", "Z", "Z-1", "Z-2", "AA", "AA-1", "BB", "BB-1", "BB-2", "CC", "CC-1", "CC-2", "DD", "DD-1", "EE", "EE-1", "FF", "FF-1", "GG", "GG-1", "HH", "HH-1", "JJ", "JJ-1", "KK", "KK-1", "LL", "LL-1", "LL-2", MM, MM-1", "NN", "NN-1", "NN-2", "OO", "OO-1", "OO-2", "PP", "PP-1", "QQ", "QQ-1", "RR", "RR-1", "SS", "SS-1", "TT", "TT-1", "UU", "UU-1", "UU-2", "VV",

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31 Petition for Review, docket, vol. 1, pp. 6-41.
32 Order dated March 13, 2012, docket, vol. 1, p. 134; Resolution dated March 29, 2012, docket, vol. 1, p. 141; Resolution dated April 19, 2012, docket, vol. 1, p. 148.
33 Docket, vol. 1, pp. 149-167.
34 Notice of Pre-Trial Conference, docket, vol. 1, p. 169.
35 Docket, vol. 1, pp. 172-182.
36 Docket, vol. 1, pp. 184-191.
37 Motion for Commissioning of an Independent Certified Public Accountant, docket, vol. 1, pp. 250-252.
38 Resolution dated October 12, 2012, docket, vol. 1, p. 264.
39 Docket, vol. 1, pp. 270-284.
40 Minutes of the Hearing dated September 18, 2012, docket, vol. 1, p. 249.
41 Minutes of the Hearing dated May 15, 2013, docket, vol. 1, p. 388.
42 Minutes of the Hearing dated October 17, 2013, docket, vol. 2, p. 631.
43 Docket, vol. 2, pp. 642-680.
44 Docket, vol. 2, pp. 880-881.

"VV-1", "WW", "WW-1", "XX", "XX-1", "XX-2", "YY", "YY-1", "YY-2", "ZZ", "ZZ-1", "AAA", "AAA-1", "AAA-2", "CCC", "CCC-1", "DDD", "EEE", "FFF", "GGG", "HHH", "III", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", "QQQ", "RRR", "SSS", "TTT", "UUU", "VVV", "WWW", "XXX", "YYY", "ZZZ-74" to "ZZZ-85", "AAAA-1" to "AAAA-66", "BBBB-1" to "BBBB-67", "CCCC-1" to "CCCC-885", "DDDD-1" to "DDDD-37", "EEEE-1" to "EEEE-52", "FFFF-1" to "FFFF-19", "GGGG-1" to "GGGG-121", "HHHH-1" to "HHHH-61", "IIII-1" to "IIII-45", "KKKK-1" to "KKKK-45", "LLLL-1" to "LLLL-36", "MMMM-1" to "MMMM-34", "NNNN-1" to "NNNN-35", "OOOO-1" to "OOOO-3", "PPPP-1" to "PPPP-27", "JJJJ-1" to "JJJJ-26", "QQQQ-1" to "QQQQ-12", "RRRR-1" to "RRRR-37", "SSSS", "TTTT-1" to "TTTT-2", "UUUU-1" to "UUUU-2", "UUUU-5" to "UUUU-7", "VVVV-1" to "VVVV-3", "VVVV-9" to "VVVV-14", "VVVV-21", "VVVV-23" to "VVVV-25", "WWWW", "XXXX", "YYYY", "ZZZZ-1" to "ZZZZ-4", AAAAA, "BBBBB", "BBBBB-1", "CCCCC", and "CCCCC-1". The Court, however, denied the admission of Exhibits "F", "ZZZ-1" to "ZZZ-73", "ZZZ-86" to "ZZZ-109", "UUUU-3" to "UUUU-4", "VVVV-4" to "VVVV-8", "VVVV-15" to "VVVV-20", and "VVVV-22" for petitioner's failure to identify said exhibits; Exhibits "N-1", "P", "P-1", "Q-1", "S-1", "U-1", "X", "X-1", "II", "II-1", and "BBB" for petitioner's failure to present the originals for comparison; Exhibit "WW-2" for not being found in the records; Exhibits "BBBB-68" to "BBBB-71" for petitioner's failure to identify said exhibits and for not being found in the records; and Exhibits "L", "L-1", "V", and "V-1" for failure to correspond with the description of the exhibits offered.

On February 10, 2014, petitioner filed an Urgent Motion for Reconsideration[45] for the reconsideration of its denied exhibits. This was partially granted by the Court in the Resolution[46] dated May 26, 2014, admitting petitioner's Exhibits "F", "L", "L-1", "N-1", "P", "P-1", "Q-1", "S-1", "U-1", "V", "V-1", "X", "X-1", "II", "II-1", "ZZZ-1" to "ZZZ-73", "ZZZ-86" to "ZZZ-109", "UUUU-3", "UUUU-4", "VVVV-4" to "VVVV-8", "VVVV-15" to "VVVV-20", and "VVVV-22", but still denied the admission of Exhibits "WW-2" and "BBB".

Petitioner filed a Motion with Leave to Admit Attached Exhibits[47] on June 18, 2014, requesting that it be allowed to submit the duly marked Exhibits "WW-2" and "BBB" and that they be admitted as part of its evidence. This was granted by the Court in the Resolution[48] dated September 10, 2014 and petitioner's Exhibits "WW-2" and "BBB" were admitted into evidence.

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[45] Docket, vol. 2, pp. 882-889.
[46] Docket, vol. 2, pp. 935-938.
[47] Docket, vol. 2, pp. 939-941.
[48] Docket, vol. 2, pp. 963-964.

On the other hand, respondent presented Revenue Officers Rey K. Lugtu[49], Ma. Luisa R. San Antonio[50], and James Suarez as his witnesses.[51]

Respondent's Formal Offer of Evidence[52] was filed on March 24, 2015. This was resolved by the Court in the Resolution[53] dated May 12, 2015, admitting respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5-a", "R-5-b", "R-5-c", "R-6", "R-6-a", "R-7", "R-8", "R-9", "R-10", "R-11", "R-15", and "R-15-a". The Court, however, denied the admission of Exhibits "R-12" and "R-12-a" for failure to correspond to the actual markings of the document; and Exhibit "R-13" for failure of respondent to identify said document.

On May 29, 2015, respondent filed an Omnibus Motion (1. For Partial Reconsideration of the Resolution Dated May 12, 2015; 2. To Set This Case for Commissioner's Hearing for Remarking of Exhibit). This was granted by the Court in the Resolutions dated July 10, 2015[54] and August 13, 2015[55], admitting respondent's Exhibits "R-12", "R-12-a", and "R-13".

Petitioner filed its Memorandum[56] through registered mail on October 16, 2015 and received by the Court on October 30, 2015. Respondent also filed his Memorandum[57] through registered mail on October 21, 2015 and received by the Court on November 2, 2015. Thus, in the Resolution[58] dated November 25, 2015, the case was declared submitted for decision.

The Issues

The parties submitted the following issues[59] for resolution of this Court:

1. Whether or not respondent Commissioner of Internal Revenue's right to assess petitioner for alleged deficiency EWT, VAT, FWT on royalties, and FBT for the fiscal year ended March 31, 2007 in the aggregate amount of Twenty-Two Million Twenty-Nine Thousand Nine Hundred Forty-Three Pesos and 91/100 (₱22,029,943.91) has already prescribed; and

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49 Minutes of the Hearing dated October 20, 2014, docket, vol. 2, p. 977.
50 Minutes of the Hearing dated February 2, 2015, docket, vol. 3, p. 1005.
51 Minutes of the Hearing dated March 3, 2015, docket, vol. 3, p. 1012.
52 Docket, vol. 3, pp. 1016-1024.
53 Docket, vol. 3, pp. 1036-1037.
54 Docket, vol. 3, pp. 1052-1054.
55 Docket, vol. 3, pp. 1058-1059.
56 Docket, vol. 3, pp. 1082-1115.
57 Docket, vol. 3, pp. 1118-1134.
58 Docket, vol. 3, p. 1138.
59 Issues, Pre-Trial Order, docket, vol. 1, p. 275.

2. Whether petitioner is liable for deficiency VAT, EWT, FWT on royalties, and FBT for the fiscal year ended March 31, 2007 in the aggregate amount of ₱22,029,943.91, inclusive of surcharge, interest, and penalty.

Petitioner's Arguments

In its Petition for Review, petitioner argues that there was no compliance with procedural due process. It contends that respondent's right to assess petitioner for any alleged deficiency EWT, VAT, FWT on royalties, and FBT for the fiscal year ended March 31, 2007 has already prescribed under Section 203 of the National Internal Revenue Code of 1997, as amended.

Moreover, petitioner contends that even assuming that the FLD/FAN was validly issued, the assessment was improper and without merit. Petitioner asserts that there is no factual and/or legal basis for petitioner's alleged deficiency EWT, VAT, FWT on royalties, and FBT as assessed by respondent. It alleges that the EWT assessment was erroneously based on tax-exempt income payments and inaccurate tax base. Petitioner also explains that its sale of scrap materials is considered as "technical importation" in which case, the twelve percent (12%) VAT thereon is paid by the third-party buyer/importer upon importation. Lastly, it points out that the deficiency FBT assessment likewise lacks legal and factual bases considering that the fringe benefits paid by petitioner were purely business in character and are therefore not subject to FBT.

Respondent's Arguments

On the other hand, respondent argues that the Court has no jurisdiction to take cognizance of the instant Petition for Review considering that the assessment has become final, executory, and demandable for failure of petitioner to validly protest the assessment. Moreover, respondent claims that even if the Court has jurisdiction over the instant case, petitioner is liable to pay its deficiency value-added tax, expanded withholding tax, final withholding tax on royalty, and fringe benefit tax in the aggregate amount of ₱22,029,943.91 for fiscal year ending March 31, 2007 as the deficiency tax assessments are supported by factual and legal bases. Respondent contends that the burden of proof is on the taxpayer; thus, it must present evidence to show the incorrectness of the assessment.

<u>The Ruling of the Court</u>

We dismiss the petition.

The Court has no jurisdiction over undisputed assessments

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law.

As regards internal revenue tax assessments, the jurisdiction of the Court is provided under Section 7(a)(1) and (2) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, as follows:

> "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 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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> (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 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 supplied)*

Accordingly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "RULE 4
> Jurisdiction of the Court
>
> xxx xxx xxx
>
> SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(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." *(Emphasis supplied)*

Lack of jurisdiction over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If a court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. A court could not decide the case on the merits.[60]

Respondent claims the subject assessment has become final, executory and demandable for failure of petitioner to validly protest it, and hence the Court has no jurisdiction over the instant petition.

Indeed, the Court has jurisdiction over the decisions of the Commissioner of Internal Revenue in cases involving disputed assessments. However, this does not cover an assessment which has become final, executory, and demandable. The rule is that for the Court 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.[61]

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*[62], the Supreme Court held that 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.

The procedure for protesting an assessment is provided in Section 228 of the NIRC of 1997, as amended, as follows:

"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 preassessment notice shall not be required in the following cases:

[60] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

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

[62] G.R. No. 169225, November 17, 2010.

xxx xxx xxx

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." *(Emphasis supplied)*

Corollary thereto, Section 3.1.5 of Revenue Regulations (RR) No. 12-99[63] provides:

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** xxx.

xxx xxx xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty

[63] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

> **(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)*

Pursuant to the foregoing provisions, the protest to the Formal Letter of Demand and the Final Assessment Notice must be made within thirty (30) days from the taxpayer's receipt of the deficiency tax assessment; otherwise, the assessment becomes final, executory, and demandable.

In the present case, petitioner failed to timely protest the Formal Letter of Demand. A perusal of the records shows that on March 15, 2010, petitioner received from respondent the PAN dated February 11, 2010.[64] In response thereto, petitioner filed a letter dated March 31, 2010, seeking further clarification on the specific issues contained in the said PAN.[65]

Thereafter, on April 22, 2010, petitioner received from respondent the Formal Letter of Demand covering Assessment Notice No. 021-120700001710346 dated March 24, 2010.[66] However, petitioner failed to file a protest against the Formal Letter of Demand and the Final Assessment Notice.

Since petitioner failed to file a protest to the Formal Letter of Demand, the assessment issued against petitioner for fiscal year ended March 31, 2007 has become final, executory, and demandable. Hence, the Court is without jurisdiction to rule on the validity or correctness of the subject assessments.

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[64] Exhibit "L", docket, vol. 2, pp. 717-723; Exhibit "R-4", BIR Records, pp. 1060-1071.

[65] Exhibit "M", docket, vol. 2, p. 724.

[66] Exhibit "N", docket, vol. 2, pp. 725-731; Exhibits "R-5-a", "R-5-b", and "R-5-c", BIR Records, pp. 1072-1085.

The FLD/FAN remains undisputed despite the BIR's issuance of an FDDA

Despite petitioner not having filed a protest to the FLD/FAN, the BIR, through Regional Director Romulo L. Aguila, Jr., issued an FDDA, which reads, in part:

> Report of **Revenue Officer James Suarez**, the new investigating officer who was given the task to re-investigate the case shows that you have failed to submit/present documents necessary to refute the findings of the previous Revenue Officer assigned to your case. The sixty day period from the date of your protest letter (March 31, 2010) within which to submit said documents has already lapsed, thus, the assessment shown in the Assessment Notice dated March 24, 2010 has become final.[67] (Emphasis in the original. Underscoring supplied.)

It appears that the BIR considered as the protest to the FLD/FAN the March 31, 2010 letter of petitioner pertaining to the PAN. However, said letter does not measure up to the requirements of Section 3.1.5 of RR No. 12-99, which states:

> **The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.** If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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[67] Docket, vol. II, p. 583.

> **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.** (Emphasis supplied.)

The March 31, 2010 letter merely asks for clarification regarding the PAN and does not present any facts, laws, rules and regulations or jurisprudence to support a protest. The body of the letter reads as follows:

> Gentlemen:
>
> **This is in response to your preliminary assessment notice** received by Finance Department dated March 15, 2010.
>
> May I ask for the **<u>clarification</u> on the preliminary assessment** that you issued to Nanox Philippines, Inc. Kindly refer to our letter to you last November 23, 2009, after your initial investigation to our Accounts, we are requesting your team to re-check our book of accounts and do the actual review. However in response with our letter you ask to have a discussion on BIR office Region -RDO 21-A, unfortunately on your side you always cancelled it until such time we received this Preliminary assessment notice.
>
> We want to **<u>clarify</u>** the following cases cited during investigation:
>
> 1. Sale of Scrap was subjected to VAT, this transaction is a inclusion on a registered company of economic zone and also to reiterate that our scrap buyer was included in the payment to Bureau of Customs.
>
> 2. On Expanded Withholding Tax Aspect. We are already presented/ submitted to your office the required documents for assessment, but still you follow your initial investigation.
>
> 3. On Fringe Benefits Tax & Final Tax on Royalties. On Fringe Benefits, during your initial investigation we already explain that some of the expats expenses you have seen were directly charge to our mother company, Nanox Japan. Final tax on royalties difference came from gain/loss on forex.
>
> We are looking forward to your usual assistance and we thank you in advance. (Emphasis and underscoring supplied.)[68]

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[68] Docket, vol. II, p. 571. The November 23, 2009 letter (Docket, vol. II, pp. 562-563) referred to states:

The foregoing letter cannot be considered a protest by the legal yardstick. Since petitioner's letter dated March 31, 2010 does not state any facts, law, rules or jurisprudence supporting a protest, the same cannot be regarded as a valid protest. Further, the statement that the March 31, 2010 letter is the protest to the FLD/FAN is not supported by the record, as in fact, petitioner did not file a protest to the FLD/FAN.

Failure of petitioner to file a valid protest against the FLD/FAN within thirty days from receipt thereof on April 22, 2010 made the FLD/FAN final, executory and demandable on May 23, 2010.

A perusal of the record shows that the first time petitioner stated the factual and legal bases of its disagreement with the subject assessment was in its Request for Reconsideration[69] of the FDDA filed with the CIR on October 1, 2010. By then, it was already too late, as the FLD/FAN had already become unappealable.

Gentlemen:

Greetings from Nanox Philippines, Inc.!

This is in response to your letter dated November 09, 2009, regarding to your Assessment fiscal year ending March 31, 2007.

Additional further clarification on the issues below:

1. On Expanded Withholding Tax Aspect:

We would like to invite BIR examiners to do the actual review and Checking of our books records such as the 1) General Ledger, 2) Supplier's Vouchers, 3) Supplier's Official Receipts, 4) And other documents and data that you may wish to open for audit. Likewise, we are currently on going coordinating with our External Auditor Isla, Lipana & Co. for the Financial Statement presentation which is your basis of the assessment.

2. On Value Added Tax (VAT) Aspect:

In additional information, the payments at custom tax and duties, Said VAT payments were already calculated and paid at the Bureau of Customs that we understood is the responsibility of the Custom Office to remit such to your office.

In addition we already called the attention of Clark Development Corporation to include in our Certificate of Registration the said Scrap Sales VAT exemption. Attached herewith is the letter of such for your ready reference. We are currently awaiting for such request certificate amendment.

3. On Fringe Benefits Tax & Final Tax on Royalties:

We would like to invite the examiners to conduct an actual review And checking of our 1) General Ledger, 2) Sales Invoices, 3) Vouchers, 4) Debit/Credit Notes pertaining to Sales.

We likewise agree to your requested to have an informal conference. Due to my recovery period giving birth, we would like to propose to have the said conference to be scheduled on <u>November 29, 2009, at 10 A.M. or within this week at your convenient schedule</u>.

We are looking forward to your usual assistance and we thank you in advance.

[69] Docket, vol. II, pp. 584-602.

Considering the foregoing, the Court finds it unnecessary to discuss the other issues raised.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice