REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

ELTA INDUSTRIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9922

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 23 2023
3:26 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that the Court render judgment ordering Respondent or her duly authorized representative to cancel and set aside for lack of factual and legal basis the undated *Formal Letter of Demand* ("FLD") and undated *Final Decision on Disputed Assessment* ("FDDA") for deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), and related deficiency interest, in the total aggregate amount of Php11,727,430.34, for taxable year ended on December 31, 2009.[1]

The Facts

Petitioner Elta Industries, Inc. is a corporation duly organized and existing under Philippine laws.[2] It is a registered taxpayer with the Bureau of

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1 Docket, Pre-Trial Order dated November 19, 2019, Statement of the Case, p. 630.
2 *Id.,* Exhibits "P-1" and "P-2", pp. 761 to 774.

Internal Revenue ("BIR") under Tax Identification Number 203-690-237-00000, with address at 6363 P. Medina St. Del Pilar, Makati City, Philippines 1230.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested by law to implement and enforce the provision of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other tax laws. He may be served with summons and other processes of this Court at the 5th Floor, BIR National Office, Agham Road, Diliman, Quezon City.[4]

On May 27, 2010, Petitioner received from Respondent *Letter of Authority* ("LOA") No. LOA-116-2010-00000026 dated May 14, 2010,[5] authorizing the examination of Petitioner's books of account and other accounting records for deficiency internal revenue taxes for taxable year ending December 31, 2009. Attached to the LOA is a *Check List of Requirements* specifying the documents that must be submitted by Petitioner to the BIR under the tax audit examination.[6]

In the letter dated May 14, 2010, Respondent requested Petitioner to reproduce its accounting records in electronic form, in accordance with Revenue Regulation ("RR") No. 16-2006.[7]

On June 08, 2010, Petitioner received the *First Notice for the Presentation of Books of Accounts and other Accounting Records* dated June 07, 2010 issued by the BIR,[8] requesting Petitioner to furnish them with its manual books of accounts and supporting documents.[9]

Thereafter, on August 16, 2010, Petitioner received the *Second and Final Notice for the presentation of Books of Accounts and Other Accounting Records* dated August 05, 2010 issued by the BIR,[10] requesting Petitioner to furnish them with its manual books of accounts and supporting documents.[11]

Petitioner, through its President, Mr. John Chua, executed a *Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue*

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[3] *Id.*, Exhibit "P-3", pp. 775.
[4] *Id.*, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, Par. 1, p. 569.
[5] BIR Records (Exhibit "R-16"), Exhibit "R-1", p. 3.
[6] Docket, JSFI, Admitted Facts, Par. 7, p. 570.
[7] *Id.*, JSFI, Admitted Facts, Par. 8, p. 570.
[8] BIR Records (Exhibit "R-16"), Exhibits "P-6" and "R-2", p. 5.
[9] Docket, Par. 9, Admitted Facts, JSFI, Docket – Vol. 2, p. 570.
[10] BIR Records (Exhibit "R-16"), Exhibits "P-7" and "R-3", p. 6.
[11] Docket, JSFI, Admitted Facts, Par. 10, p. 570.

Code ("Waiver") on November 03, 2012,[12] wherein the company consented to the assessment and/or collection of tax or taxes of year 2009 which may be found due after investigation / reinvestigation / re-evaluation at any time before or after the lapse of the period of limitations fixed by the Tax Code, but not later than June 20, 2013.

On May 17, 2013, Petitioner received from the BIR a *Notice for Informal Conference* ("NIC").[13] Attached to the said NIC is a computation of tax and *Details of Discrepancies.*[14]

Petitioner, through its President, Mr. John Chua, then executed another Waiver on May 30, 2013,[15] wherein the company consented again to the assessment and/or collection of tax or taxes for the same year not later than December 31, 2013.

Subsequently, on October 14, 2013, Petitioner received from Respondent the *Preliminary Assessment Notice* ("PAN") dated October 14, 2013,[16] assessing Petitioner deficiency income tax, VAT, EWT, withholding tax on compensation ("WTC"), with interest and penalties, for taxable year ending December 31, 2009, in the aggregate amount of Php44,353,656.39 [17] Consequently, on November 15, 2013, Petitioner filed its *Reply.*[18]

On December 03, 2013, Petitioner, through its President, Mr. John Chua, executed a third Waiver,[19] wherein for the third time the company consented to the assessment and/or collection of tax or taxes for the same year not later than June 30, 2014.

On December 23, 2013, Petitioner received from Respondent the assailed undated FLD, with attached *Details of Discrepancies* and *Assessment Notices,*[20] finding Petitioner liable for deficiency internal revenue taxes, interest, and penalties, for taxable year ending December 31, 2009.[21] Under the FLD, the BIR assessed Petitioner deficiency income tax, VAT, EWT, WTC, and

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12 BIR Records (Exhibit "R-16"), Exhibit "R-4", p. 692.
13 *Id.,* Exhibit "R-5", BIR Records (Exhibit "R-16"), p. 696.
14 Docket, JSFI, Admitted Facts, Par. 11, p. 570.
15 BIR Records (Exhibit "R-16"), Exhibit "R-6", p. 692-A.
16 *Id.,* Exhibits "P-11" to "P-11-4", and "R-8", pp. 707 to 712.
17 Docket, JSFI, Admitted Facts, Par. 12, p. 571.
18 *Id.,* JSFI, Admitted Facts, Par. 13, p. 571.
19 BIR Records (Exhibit "R-16"), Exhibit "R-10", p. 692-C.
20 BIR Records (Exhibit "R-16"), Exhibit "R-11", pp. 724 to 732; Docket, Exhibits "P-12" to "P-12-8", pp. 790 to 798.
21 Docket, JSFI, Admitted Facts, Pars. 2 and 14, pp. 569 and 571, respectively.

administrative penalties, for taxable year ending December 31, 2009, with the total amount of Php46,130,521.28, broken down as follows:[22]

Type	Basic	Interest	Penalty	Total
Income tax	Php18,987,514.71	Php14,107,983.53	Php50,000.00	Php33,145,498.25
VAT	6,998,869.81	5,507,055.92	50,000.00	12,555,925.73
EWT	165,926.32	138,480.03	16,000.00	320,406.35
WTC	53,864.77	42,826.18	12,000.00	108,690.95
			TOTAL	**Php46,130,521.28**

On June 30 2016, Petitioner received from Respondent the assailed undated FDDA with attached *Details of Discrepancies* and *Assessment Notices*,[23] which partially denied Petitioner's *Protest* to the FLD.[24] The FDDA reduced the total assessment to Php11,072,039.02, representing assessments for deficiency income tax, VAT, EWT, including interests, for taxable year ending December 31, 2009, broken down as follows:[25]

Type	Basic	Interest	Total
Income tax	Php3,793,661.73	Php4,778,974.42	Php8,572,636.16
VAT	1,065,990.06	1,389,583.75	2,445,573.81
EWT	16,122.55	27,706.50	43,829.05
		TOTAL	**Php11,072,039.02**

In the attached *Details of Discrepancies*, Petitioner was given the option to either appeal the disputed assessments to this Court or to Respondent, through a request for reconsideration, within thirty (30) days from receipt thereof.[26] Thus, on July 28, 2016, Petitioner filed its *Request for Reconsideration* to the said FDDA with Respondent.[27]

On August 07, 2018, Petitioner received from Respondent a letter,[28] which denied Petitioner's *Request for Reconsideration* to the FDDA.[29]

Petitioner filed the present *Petition for Review* on September 05, 2018.[30]

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22 *Id.*, JSFI, Admitted Facts, Par. 14, p. 571.
23 Exhibits "P-14" to "P-14-4", and "R-13", BIR Records (Exhibit "R-16"), pp. 751 to 756.
24 Docket, JSFI, Admitted Facts, Pars. 3 and 15, pp. 569 and 571, respectively.
25 *Id.*, JSFI, Admitted Facts, Par. 16, pp. 571 to 572.
26 *Id.*, JSFI, Admitted Facts, Par. 4, pp. 569 to 570.
27 *Id.*, JSFI, Admitted Facts, Pars. 5 and 18, pp. 570 and 572, respectively.
28 BIR Records (Exhibit "R-16"), Exhibit "R-15", pp. 764 to 765; Docket, Exhibits "P-16" to "P-16-1", pp. 828 to 829.
29 Docket, JSFI, Admitted Facts, Pars. 6 and 19, pp. 570 and 572, respectively; BIR Records (Exhibit "R-16"), Exhibit "R-15", pp. 764 to 765.

Respondent filed his *Answer* on November 19, 2018,[31] interposing certain special and affirmative defenses, to wit: (1) the Court's power of judicial review over decisions of Respondent on disputed assessment is by nature exclusive and appellate, and Petitioner should not be allowed to raise issues for the first time on appeal; (2) assuming without conceding that the Court may pass upon the issue of validity of the LOA and the alleged lack of fixed period for the payment of deficiency tax assessment, the FLD and FDDA issued against Petitioner for taxable year 2009 was issued in accordance with law and the pertinent rules; (3) the assessment was issued against Petitioner pursuant to a valid and subsisting LOA; (4) the FLD has fixed and definitely set the deficiency tax liabilities of Petitioner; (5) Respondent's right to assess Petitioner for taxable year 2009 did not prescribe as the three-year period within which to make the assessment finds no application to the instant case; (6) assuming further that the three-year period finds application to the instant case, Respondent's right to assess did not prescribe due to the valid execution of waivers in accordance with law; (7) the assessment has bases both in fact and in law; (8) Petitioner is liable for interest and compromise penalties; and (9) the assessment issued against Petitioner is valid and lawful.

On December 07, 2018, Petitioner filed its *Reply (Answer dated November 16, 2018)*.[32]

Respondent transmitted the *BIR Records* of the present case [consisting of seven hundred sixty-seven (767) pages in one (1) folder] on February 15, 2019.[33]

The Pre-Trial Conference was initially scheduled to be conducted on March 31, 2019,[34] but was finally reset to,[35] and held on, October 08, 2019.[36] Prior thereto, *Respondent's Pre-Trial Brief* was filed on March 14, 2019,[37] while Petitioner's *Pre-Trial Brief* was submitted on July 04, 2019.[38]

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30 Docket, pp. 10 to 51.
31 *Id.*, pp. 435 to 468.
32 *Id.*, pp. 472 to 488.
33 *Id.*, Compliance dated February 14, 2019, pp. 493 to 495.
34 *Id.*, Notice of Pre-Trial Conference dated November 22, 2018, pp. 470 to 471.
35 *Id.*, Refer to the Order dated March 22, 2019, p. 530; and Resolution dated July 04, 2019, p. 560.
36 *Id.*, Resolution dated July 04, 2019, p. 560; Minutes of the hearing held on, and Order dated, October 08, 2019, pp. 579 and 583 to 584, respectively.
37 *Id.*, pp. 503 to 508.
38 *Id.*, pp. 531 to 540.

On October 03, 2019, the parties filed their *Joint Stipulation of Facts and Issues* ("JFSI").[39] In the Order dated October 08, 2019,[40] the Court approved the said JSFI and terminated the pre-trial. The Pre-Trial Order dated November 19, 2019 was then subsequently issued by the Court.[41]

Trial then ensued.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Melissa C. Cuevo,[42] Accounting Staff of Petitioner; and (2) Mr. Michael L. Aguirre,[43] the Court-commissioned Independent Certified Public Accountant (ICPA).[44]

The *Report* of the ICPA was transmitted on January 07, 2020.[45]

Petitioner posted its *Formal Offer of Evidence* on August 10, 2020.[46] Respondent's *Comment (to Petitioner's Formal Offer of Evidence)* was sent to this Court *via* electronic mail on October 20, 2020.[47] In the Resolution dated January 08, 2021,[48] the Court admitted Petitioner's offered exhibits, *except* for the following:

1. Exhibits "P-5", "P-8", "P-10", "P-15", "P-15-1", "P-15-2", "P-15-3", "P-15-4", "P-15-5", "P-15-6", "P-15-7", "P-15-8", "P-15-9", "P-15-10", "P-15-11", "P-15-12", "P-15-13", "P-15-14", "P-15-15", "P-15-16", "P-15-17", "P-15-18", "P-15-19", "P-15-20", "P-15-21", and "P-19-3", for failure to present originals for comparison; and

2. Exhibits "P-19-9" and "P-19-10", for failure to correspond with the duly marked documents.

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[39] *Id.,* pp. 569 to 577.
[40] *Id.,* pp. 583 to 584.
[41] *Id.,* pp. 630 to 640.
[42] *Id.,* Exhibit "P-25", pp. 742 to 760; Minutes of hearing held on, and Order dated, February 06, 2020, pp. 969 to 971.
[43] *Id.,* Exhibit "P-27", pp. 976 to 990; Minutes of hearing held on, and Order dated, July 09, 2020, pp. 1046 to 1048.
[44] *Id.,* Oath of Commission dated November 20, 2019, p. 645; Minutes of hearing held on, and Order dated, November 20, 2019, pp. 644 and 646 to 647, respectively.
[45] *Id.,* Exhibit "P-26", pp. 663 to 698.
[46] *Id.,* pp. 1049 to 1218.
[47] *Id.,* pp. 1302 to 1303.
[48] *Id.,* pp. 1312 to 1322.

Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of Revenue Officer (RO) Jan Andre Abellera.[49]

On February 16, 2021, Respondent's *Formal Offer of Evidence* was filed,[50] to which Petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated February 16, 2021)* on February 22, 2021.[51] In the Resolution dated March 12, 2021,[52] the Court admitted all of Respondent's offered exhibits.

On October 27, 2021, Petitioner filed its *Memorandum*.[53] Respondent, however, failed to file his memorandum.[54]

The present case was deemed submitted for decision on March 24, 2022.[55]

<u>The Issues</u>

As stipulated by the parties, the following issues are to be resolved by the Court, *viz*:

"1. WHETHER OR NOT THE FORMAL LETTER OF DEMAND AND FINAL DECISION ON DISPUTED ASSESSMENT WHICH ASSESSED PETITIONER DEFICIENCY INTERNAL REVENUE TAXES FOR TAXABLE YEAR ENDED DECEMBER 31, 2009 ARE VOID.

2. WHETHER OR NOT PETITIONER IS LIABLE FOR THE DEFICIENCY INTERNAL REV[E]NUE TAXES, INTEREST AND COMPROMISE PENALTIES FOR TAXABLE YEAR ENDED DECEMBER 31, 2009 ASSESSED UNDER THE FINAL DECISION ON DISPUTED ASSESSMENT."[56]

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49 *Id.,* Exhibit "R-17", pp. 514 to 528; Minutes of hearing held on, and Order dated, February 03, 2021, pp. 1337 to 1339.
50 *Id.,* pp. 1340 to 1345.
51 *Id.,* pp. 1348 to 1352.
52 *Id.,* pp. 1354 to 1355.
53 *Id.,* pp. 1356 to 1401.
54 *Id.,* Refer to the Records Verification Report dated March 17, 2022 issued by the Judicial Records Division of this Court, p. 1403.
55 *Id.,* Resolution dated March 24, 2022, p. 1404.
56 *Id.,* Issue[s] To Be Resolved, JSFI, pp. 572 to 573.

Petitioner's Arguments

Petitioner argues that the undated FLD and FDDA which assessed Petitioner's deficiency internal revenue taxes for taxable year ended December 31, 2009 are void; that the FLD and FDDA are void for having been issued pursuant to an expired LOA; that the FLD is void for failure to state a definite time for the payment of Petitioner's supposed tax liabilities and the absence of a final statement of Petitioner's liability; that the FLD is void for having been issued beyond the prescriptive period; that Petitioner is not liable for deficiency income tax on unsupported purchases of Php2,142,250.31; that Petitioner is not liable for deficiency income tax and VAT on undeclared sales (SLS/Relief/SAWT) of Php2,669,164.90; that Petitioner is not liable for deficiency income tax and VAT on undeclared purchases of Php4,755,740.95; that Petitioner is not liable for deficiency income tax on disallowed interest expense of Php300.08; that Petitioner is not liable for deficiency income tax on disallowed creditable withholding tax of Php230,207.04; and that Petitioner is not liable for deficiency EWT of Php43,829.05 and compromise penalties in the total amount of Php89,000.00.

Respondent's Counter-arguments

Respondent contends that the Court's power of judicial review over decisions of Respondent on disputed assessment is by nature exclusive and appellate, and Petitioner should not be allowed to raise issues for the first time on appeal; that assuming without conceding that the Court may pass upon the issue of validity of the LOA and the alleged lack of fixed period for the payment of deficiency tax assessment, the FLD and FDDA issued against Petitioner for taxable year 2009 was issued in accordance with law and the pertinent rules; that the assessment was issued against Petitioner pursuant to a valid and subsisting LOA; that the FLD has fixed and definitely set the deficiency tax liabilities of Petitioner; that Respondent's right to assess Petitioner for taxable year 2009 did not prescribe as the three-year period within which to make the assessment finds no application to the instant case; that assuming further that the three-year period finds application to the instant case, Respondent's right to assess did not prescribe due to the valid execution of waivers in accordance with law; that the assessment has bases both in fact and in law; that Petitioner is liable for interest and compromise penalties; and that the assessment issued against Petitioner is valid and lawful.

Discussion/Ruling

For an orderly disposition of this case, the Court shall determine first the timeliness of the filing of the instant *Petition for Review.*

The Court of Tax Appeals ("CTA") is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[57] The jurisdiction of the CTA as regards to disputed assessment is provided under Section 7(a)(1) of Republict Act ("RA") No. 1125[58], as amended by RA No. 9282[59], which reads:

> "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 or other laws administered by the Bureau of Internal Revenue;"[60]

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals[61] (RRCTA) states:

> "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:

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57 Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.
58 An Act Creating The Court Of Tax Appeals, June 16, 1954.
59 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30 2004.
60 *Emphasis supplied.*
61 A.M. No. 05-11-07-CTA, November 22, 2005.

> (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"[62]

Under Section 11 of RA No. 1125, as amended by RA No. 9282, a taxpayer aggrieved by a decision of the Commissioner of Internal Revenue ("CIR") may file an appeal with the CTA within thirty (30) days from the receipt thereof:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[63]

In the case at bar, the following are the factual antecedents that eventually led to the filing by Petitioner of its *Petition for Review* before this Court:

- October 14, 2013 – Petitioner received the PAN dated October 14, 2013.
- November 15, 2013 – Petitioner filed its Reply (to the PAN).
- December 23, 2013 – Petitioner received the undated FLD.
- January 06, 2014 – Petitioner filed a Letter (replying to the FLD).
- June 30, 2016 – Petitioner received the undated FDDA, signed by then Commissioner of Internal Revenue Kim S. Jacinto-Henares.
- July 28, 2016 – Petitioner filed a Request for Reconsideration (to the FDDA) to then Commissioner of Internal Revenue Caesar R. Dulay.

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62 *Emphasis supplied.*
63 *Emphasis and underscoring supplied.*

- August 07, 2018 – Petitioner received an undated Letter from then Commissioner of Internal Revenue Caesar R. Dulay denying Petitioner's Request for Reconsideration (to the FDDA).
- September 05, 2018 – Petitioner filed a Petition for Review before this Court, appealing the undated Letter it received on August 07, 2018.

After a review of the documents supporting the facts above, it can be deduced that the undated FDDA, signed by then Commissioner Kim S. Jacinto-Henares, should be considered as the decision appealable to this Court, and not the undated Letter from then Commisioner Caesar R. Dulay denying Petitioner's Request for Reconsideration (to the FDDA). Applying the thirty (30)-day period under Section 11 of RA No. 1125, as amended by RA No. 9282, the *Petition for Review* was filed out of time.

As early in 2013, Section 3.1.4 of RR No. 12-99[64], as amended by RR No. 18-13[65], explicitly provides that the only remedy granted to the taxpayer in case the protest or administrative appeal to the FDDA is denied by the CIR is to appeal to the CTA within thirty (30) days from date of receipt of the said decision. More importantly, the filing of a motion for reconsideration which will toll the said thirty (30)-day period only exists when the denial was made by the CIR's duly authorized representative, and not when it was made by the CIR himself or herself. Pertinent provisions of Section 3.1.4 provide:

> "If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
>
> **If the protest is denied**, in whole or in part, <u>by the **Commissioner's duly authorized representative**</u>, **the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days**

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[64] 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, September0 6, 1999.

[65] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

xxx xxx xxx

If the protest or administrative appeal, as the case may be, **is denied**, in whole or in part, **<u>by the Commissioner</u>, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision**. Otherwise, the assessment shall become final, executory and demandable. **A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal**, as the case may be, **shall not toll the thirty (30)-day period to appeal to the CTA**."[66]

Section 3.1.4 further provides that the "assessment shall become final, executory and demandable" in the event the denial of the protest or administrative appeal by the CIR is not appealed to the CTA within thirty (30) days from receipt thereof. This was reiterated in Revenue Memorandum Order ("RMO") No. 26-2016[67], *viz.*:

"An **assessment** shall become **final, executory and demandable** due to, among others, the following grounds:

xxx xxx xxx

(d) **Failure of the taxpayer to appeal to the CTA within thirty (30) days from date of receipt of the FDDA <u>issued by the Commissioner</u>**;"[68]

Considering that Petitioner received the undated FDDA on June 30, 2016, Petitioner should have filed its appeal with the CTA within thirty (30) days from its receipt or on or before July 30, 2016. The instant petition was filed only on September 05, 2018; thus, the same was clearly filed beyond the thirty (30)-day reglementary period. The filing of a motion for reconsideration of the undated FDDA on July 28, 2016 with the CIR did not toll the thirty (30)-day period within which to appeal the undated FDDA to the CTA.

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66 *Emphasis and underscoring supplied.*
67 Policies and Guidelines in Handling Disputed Assessments, June 13, 2016.
68 *Emphasis and underscoring supplied.*

Since there was failure to appeal the undated FDDA to the CTA it has already become final and executory. Simply put, this Court is already deprived of its jurisdiction to act on the *Petition for Review*, much more, to decide the case on the merits. The only power left is to dismiss the case.

Admittedly, in the attached *Details of Discrepancies* to the FDDA, Petitioner was given the option to appeal the disputed assessment to Respondent through a request for reconsideration within thirty (30) days from receipt. However, it is well-settled that the government is not bound by the errors committed by its agents.[69] The errors of certain administrative officers should never be allowed to jeopardize the government's financial position and collection of legitimate taxes. Allowing the taxpayer to file a motion for reconsideration to the FDDA is clearly counter to the BIR's own rules and regulations, particularly Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-13, and Section 15(d) of RMO No. 26-2016.

Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[70]

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[69] Intra-Strata Assurance Corporation and Philippine Home Assurance Corporation v. Republic of the Philippines, represented by the Bureau of Customs, G.R. No. 156571, July 09, 2008.
[70] Commisioner of Internal Revenue v. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice