REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1637 (CTA CASE No. 8745)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
MANNASOFT TECHNOLOGY CORPORATION, *Respondent.*	Promulgated: JAN 18 2019 4:03p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by Mannasoft Technology Corporation (Mannasoft), seeking to set aside this Court's Decision promulgated on June 19, 2018,[2] the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly, the Decision promulgated on January 13, 2017 and the Resolution dated March 16, 2017 by the Third Division in CTA Case No. 8745 are **REVERSED** and **SET ASIDE**.

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[1] Filed on July 16, 2018; *En Banc* Docket, pp. 100-116.
[2] *En Banc* Docket, pp. 79-96.

Accordingly, Mannasoft Technology Corporation is **ORDERED** to pay for the following:

a. assessment for deficiency income tax in the amount of Php13,475,472.84

b. value-added tax in the amount of Php57,102,109.92, and

c. for expanded withholding tax in the amount of Php8,212,654.77, all inclusive of deficiency interests and surcharges for calendar year 2008.

In addition, Mannasoft Technology Corporation is liable to pay delinquency interest at the rate of 12%, which is double the legal interest rate for loans or forbearance of any money, on the total unpaid amount of Php78,790,237.53, consisting of deficiency income tax, value-added tax, and expanded withholding tax, inclusive of deficiency interests and surcharges, computed from December 16, 2011, the due date appearing in the Assessment Notices until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

In its motion, Mannasoft reiterates that the Petition for Review was filed on time and the 30-day reckoning period to file a Petition for Review before this Court must be commenced not from the date of the receipt of the Warrant of Distraint or Levy (WDL) but on the subsequent receipt of the BIR's letter dated November 14, 2013. It also claims that the WDL could not attain finality as it is pursuant to a void assessment and that the assessment is void because the investigation was conducted without proper authority. Lastly, assuming that the Court has no jurisdiction over the case, Mannasoft should not be ordered to pay for the deficiency interest.

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Records Verification dated December 6, 2018 showed that Commissioner of Internal Revenue (CIR) failed to file his comment on Mannasoft's Motion for Reconsideration.

The motion is bereft of merit.

Mannasoft is questioning the validity of the assessment, and consequently, the WDL that reckons the 30-day period to file a petition for review before this Court pursuant to an alleged void assessment. However, questioning the validity of WDL is neither imprescriptible nor akin to an action for declaration of a contract's nullity, reconveyances of property on void contracts, and void judgments.[3]

Thus, in questioning the assessment, and consequently the validity of the WDL to constitute as the final decision of the CIR on Mannasoft's protest, an appeal must first be made within the period fixed by law. Evident from the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[4] that this Court has jurisdiction to pass upon the validity of a WDL, conditioned only on the timely filing of a petition for review.[5]

The same ruling was pronounced in the *En Banc* case of *Jowelles Autoparts, Inc. vs. Bureau of Internal Revenue, represented by the Regional Director, Revenue District 15,*[6] citing the affirmed assailed Resolution[7] therein, which states that:

> "Note that the 30-day period to appeal before the CTA is reckoned from petitioner's receipt of the WDL No. 15-17-003 on July 23, 2015. Hence, petitioner had until August 22, 2015 to seek judicial intervention through a Petition for Review, as the WDL constitutes an act of respondent on "other matters" arising under the NIRC or other laws administered by the BIR, which could be the subject of an appropriate appeal with the CTA. But it took petitioner a no less than 267 days, a

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[3] *Jowelles Autoparts, Inc. vs. Bureau of Internal Revenue, represented by the Regional Director, Revenue District 15,* CTA EB No. 1594, April 2, 2018.
[4] G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[5] *Supra,* note 3, CTA Case No. 9333, September 26, 2016.
[6] *Supra,* note 3.
[7] *Supra,* note 5.

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> period far beyond the 30-day prescriptive period, to challenge the validity of the said WDL before the Court."

Evidently, the Court in Division no longer has jurisdiction to act on the Petition for Review as it was filed out of time. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same on time can no longer be contested. An assessment that has become final only means that the validity or correctness of the assessment may no longer be questioned on appeal. In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands (BPI)*,[8] the Supreme Court held that this Court correctly dismissed BPI's appeal for lack of jurisdiction regarding final and unappealable assessment. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits.[9]

In the case of *Adelardo K. Pagente vs. Hon. Esmeralda M. Tabule, Hon. Nelson Aspe and Hon. Kim Jacinto Henares (the "Pagante Case")*,[10] the *En Banc* ruled:

> "To circumvent the unappealable character of an assessment that had attained finality, the petitioner resorted to the ruse of assailing not the assessment itself but the adjuncts of its validity: service of notice, the authority of the officer who issued the PAN, and the alleged use of the thereby invalid PAN as basis for the FAN and FLO. But as the jurisprudence cited above enunciate, the validity of an assessment may no longer be questioned on appeal."

In sum, there is no compelling reason to discuss all other issues assailed by Mannasoft as there is nothing to invalidate that is within the jurisdiction of this Court. Evidently, its prayers are indicative that the issues raised by it all arose from the final decision that it failed to properly appeal on time; which, as held in the *Pagante Case*, do not

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[8] G.R. No. 134062, April 17, 2007.
[9] *Light Rail Transit Authority vs. Bureau of Internal Revenue, Represented by the Commissioner of Internal Revenue,* CTA EB No. 1325, April 11, 2017.
[10] CTA EB Case No. 1030, June 3, 2014.

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fall within this Court's jurisdiction. In other words, the Court is deprived of its jurisdiction to act upon the correctness and the validity of the WDL and the assessment.

Again, We stress that, while the right to appeal a decision of the CIR to the this Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the final decision, or ruling is jurisdictional.[11] If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional.[12]

Anent the payment of deficiency interest, it is but a necessary consequence of the finality of the final assessment notice and the WDL.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I join Justice Fabon's Concurring and Dissenting Opinion

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[11] *Supra,* note 9.
[12] *Ker and Company, Ltd. vs. The Court of Tax Appeals and the Collector of Internal Revenue*, G.R. No. L-12396, January 31, 1962, citing *Callahan vs. Chespeake & Ohio*, 407 Supp. 323, mentioned on p. 175, Moran's Rules of Court, Vol. 1, 1952 Ed.

ESPERANZA R. FABON-VICTORINO
Associate Justice

"**I reiterate my Concurring and Dissenting Opinion**"
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

"**I join Justice Liban's previous Dissenting Opinion**"
CATHERINE T. MANAHAN
Associate Justice