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:
MAY 25 2023
8:00 a.m.

x---x

RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is Petitioner's "Motion for Reconsideration"[1] filed on March 09, 2022, with Respondent's "Comment/Opposition (to Petitioner's Motion for Reconsideration)" filed on March 10, 2023 ("Comment").

On January 23, 2023, the Court promulgated a Decision[2] dismissing for lack of jurisdiction the petition to cancel and set aside the undated *Formal Letter of Demand* ("FLD") and undated *Final Decision on Disputed Assessment* ("FDDA") assessing Petitioner deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and deficiency interest for taxable year ended on December 31, 2009, in the total aggregate amount of Php11,727,430.34. The dispositive portion of the said Decision states:

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

---

1 Docket, pp. 1421-1469.
2 *Id.*, pp. 1407-1420.

SO ORDERED."[3]

In its "Motion for Reconsideration", Petitioner primarily insists that the doctrine that the government is not bound by the errors committed by its agents does not find application in this case. According to Petitioner, it relied on the wordings of the Bureau of Internal Revenue ("BIR") in the assessment notice and should not be faulted by the latter's representations.

Petitioner likewise posits that since the undated FLD and undated FDDA are void, the same cannot be the basis of any final and executory assessment. Petitioner then enumerated the following grounds in support of its allegation – that the assessment is void for having been issued pursuant to an expired Letter of Authority ("LOA"); 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; for having been issued beyond the prescriptive period; and for having been assessed without a good faith evaluation of the arguments and documents presented by Petitioner during the Preliminary Assessment Notice ("PAN") stage.

Lastly, Petitioner asserts that the deficiency internal revenue tax assessments against Petitioner under the PAN, FLD and FDDA are without factual and legal basis.

On the other hand, Respondent in his Comment avers that the Court *a quo* correctly ruled that it does not have jurisdiction over the instant case citing the case of *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[4].

Respondent further argues that the assessments are valid having been issued pursuant to a valid LOA. Even if BIR Revenue Memorandum Circular No. 36-2010 states that all reports of investigations shall be submitted not later than six (6) months after the issuance of the LOA, nowhere does it say that the LOA shall expire after the 6-month period.

Anent the failure to indicate a due date for the payment of tax liabilities in the FLD, Respondent maintains that Petitioner should not be allowed to raise for the first time on appeal questions not raised at the administrative forum as it will violate the rules of exhaustion of administrative remedies and doctrine that new issues cannot be raised for the first time on appeal.

Finally, Respondent claims that its right to assess has not prescribed, the parties having executed several waivers which validly extended Respondent's right to assess Petitioner.

---

[3] *Id.*, pp. 1419.
[4] G.R. No. 179343, January 21, 2010.

We agree with Respondent. We find Petitioner's Motion for Reconsideration bereft of merit.

The issue on jurisdiction is not novel. Basic is the rule that before any court decides a case on its merits, it must first make sure that it has jurisdiction over it. For 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 and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court 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 the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[5]

Jurisdiction is defined as the power and authority to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter.[6] Verily, this Court cannot inquire into the validity of the assessment if it lacks jurisdiction to entertain the case.

In the case at bar, the basis for the dismissal of the Petition for Review filed by Petitioner is grounded on substantive law. Section 228[7] of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides quite clearly that an appeal to this Court must be made within thirty (30) days from receipt of the FDDA, and that failure to appeal within the said period renders the assessment final, executory and demandable. Section 228 is implemented by Revenue Regulations ("RR") No. 12-99 as amended by RR No. 18-2013. The said Regulation further clarified that if the protest or administrative appeal is denied by the Commissioner of Internal Revenue ("CIR") himself, and not his authorized representative, the only remedy for the taxpayer is to appeal the same to the Court of Tax Appeals ("CTA") within thirty (30) days from date of receipt of the said decision.

---

5 Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue, G.R. No. 185666, February 04, 2015.

6 Perfecto Velasquez, Jr. v. Lisondra Land Incorporated, Represented by Edwin L. Lisondra, G.R. No. 231290, August 27, 2020.

7 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...

xxx xxx xxx

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty days (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.

Since Petitioner received the undated FDDA on June 30, 2016, Petitioner's appeal with the CTA which was filed on September 05, 2018 was clearly beyond the 30-day period.

Needless to say. compliance with Section 228 of the NIRC of 1997, as amended, is a substantive requirement and not merely a matter of formality.[8] Moreover, filing of a motion for reconsideration of the denial of the administrative protest issued by the CIR, as what happened in this case, does not toll the 30-day period to appeal to the CTA.[9]

With the above disquisition on the issue of jurisdiction, the Court will no longer belabor on the rest of the arguments raised about the validity or invalidity of the assessment.

There being no new matter or substantial issue raised by Petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on January 23, 2023.

WHEREFORE, in light of the foregoing considerations, Petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

8 Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 215957, November 09, 2016.
9 Fishwealth Canning Corporation v. Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 179343, January 21, 2010.