REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BAYUGAN FARMERS MILLERS MULTI-PURPOSE COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND ATTY. NASSER A. TANGGOR-OIC REGIONAL DIRECTOR, REVENUE REGION NO. 17,
Respondents.

CTA Case No. 9928

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

MAR 07 2024 3:41 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on March 29, 2019 by petitioner Bayugan Farmers Millers Multi-Purpose[1] (**"Petitioner"**), against respondents Commissioner of Internal Revenue (**"CIR"**) and Atty. Nasser A. Tanggor – Officer in Charge (**"OIC"**) Regional Director, Revenue Region No. 17 (**"RD Tanggor"**), under Section 3(a), Rule 8,[2] in relation to Section

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[1] Docket – Vol. I, pp. 10 to 29.

[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3(a)(2), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**").

THE PARTIES

Petitioner Bayugan Farmers Millers Multi-Purpose is a duly registered cooperative with the Cooperative Development Authority ("**CDA**"), with Registration No. 9520-13003517, and postal address at Andanan, Bayugan City.[5]

Respondent CIR is vested under the law with the authority to carry out the functions, duties, and responsibilities of said office, including the power to assess and collect all national internal revenue taxes.

Respondent Atty. Nasser A. Tanggor is impleaded as the OIC Regional Director of Revenue Region No. 17, Caraga Region of the Bureau of Internal Revenue ("**BIR**").[6]

THE ANTECEDENT FACTS

Petitioner was allegedly granted tax exemption under Republic Act ("**RA**") No. 9520[7] through Tax Exemption Ruling, June 17, 2010, RDA - RR No. 17 - Ruling No. 31-10. The tax exemption is valid for a period of five (5) years from the date of its issuance under Section 8 of Revenue Memorandum Order ("**RMO**") No. 76-2010.[8]

On May 7, 2015, prior to the expiration of its tax exemption, petitioner applied for renewal of its tax exemption.[9]

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[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) 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 or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case: Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code. ...
[4] A.M. No. 05-11-07-CTA.
[5] Petitioner's Memorandum, Brief Statement of Facts, par. 1, Exhibit "P-12", Docket – Vol I, pp. 63-72.
[6] Petition for Review, par. 1.2, Docket – Vol. I, p. 11.
[7] Philippine Cooperative Code of 2008, February 17, 2009.
[8] Prescribing the Policies and Guidelines in the Issuance and Monitoring of Certificate of Tax Exemption of Cooperatives, September 27, 2010.
[9] As indicated in RO Barcelon's Memorandum, *infra* at note 11.

Despite alleged compliance with all the requirements of RMO No. 76-2010,[10] the tax exemption of petitioner was not renewed.

On August 19, 2015, Revenue Officer ("**RO**") Ma. Abelly Barcelon ("**RO Barcelon**") issued a *Memorandum* [11] recommending the issuance of a Letter of Authority ("**LOA**") against petitioner for taxable year ("**TY**") 2014.

On September 24, 2015, an LOA[12] was issued by Regional Director Norberto D. Vitug ("**RD Vitug**"), acting as the Regional Director of Revenue Region No. 17 - Butuan City, authorizing RO Barcelon and RO Ma. Flora Aquino ("**RO Aquino**") to examine petitioner's books of accounts and other accounting records for TY 2014. This was served upon petitioner on October 6, 2015.

On October 23, 2015, petitioner wrote a *Letter* addressed to Ma. Jonelle S. Faune, OIC - Revenue District Officer ("**RDO Faune**") of Revenue District Office ("**RDO**") No. 104 – Bayugan City, pointing to the fact that the latter failed to act on the renewal of the tax exemption.[13] The *Letter* also pointed out that the LOA was issued in alleged violation of Section 16 of the Joint Rules and Regulations Implementing Articles 60, 61, and 144 of RA No. 9520, which requires authorization from the CDA prior to the conduct of an audit.

On October 27, 2015, RO Barcelon prepared a *Memorandum Report*[14] to RDO No. 104, informing the said office that a request had been made from CDA with regard to the investigation and audit of petitioner for TY 2014.

On November 3, 2015, Revenue District Officer Casan P. Azis ("**RDO Azis**") sent a *Letter* to a certain Genaro D. Ravanera, Jr.,[15] purportedly the Regional Director of the CDA for Region XIII, requesting authorization to examine petitioner's books of accounts and other accounting records.[16]

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[10] Prescribing the Policies and Guidelines in the Issuance and Monitoring of Certificate of Tax Exemption of Cooperatives, September 27, 2010.
[11] Exhibit "P-4", *id.*, p. 17.
[12] Exhibit "P-5", *id.*, p. 18.
[13] BIR Records, pp. 152-153.
[14] Exhibit "R-4", *id.*, p. 155.
[15] This is the name as indicated in the *Letter*, *infra* at note 16. We note that the reply of the addressee indicated his name as "Genaro D. Pogata, Jr.," *infra* at note 18.
[16] Exhibit "R-5", BIR Records, p. 157.

In another *Letter* dated November 3, 2015, RDO Azis informed petitioner that they are now seeking authorization from the CDA in relation to the conduct of the audit. A copy of the *Memorandum* dated October 27, 2015 was furnished to petitioner.[17]

On November 25, 2015, the CDA acknowledged receipt of RDO Azis' November 3, 2015 *Letter* and asked for the BIR's comments on petitioner's raised defenses.[18]

On March 11, 2016, a *Letter* was issued by the CDA granting authority to examine petitioner's books, but limited only to petitioner's gas pump operations and further limited to 120 days from the issuance of the said *Letter.*[19]

The audit of petitioner's books began on March 29, 2016, as indicated in the *1st Indorsement*, dated July 27, 2016, issued by RDO Azis.[20]

As a result of the audit, petitioner has been given a copy of *Details of Discrepancies - Calendar Year 2014* with the total amount due and collectible of ₱4,952,538.37.[21] The deficiency emanated from the assessment of the appellant's gas pump operation, which was ruled to be from unrelated activities under Section 9 of RMO No. 76-2010.

On December 19, 2016, a *Preliminary Assessment Notice* ("**First PAN**")[22] was issued. This prompted petitioner to request for reinvestigation.

On June 19, 2017, a *Preliminary Assessment Notice (After Reinvestigation)* ("**Second PAN**")[23] was issued indicating that the total tax due and collectible is ₱5,238,386.76.

On July 18, 2017, RD Tanggor issued a Formal Letter of Demand ("**FLD**")/Final Assessment Notices ("**FANs**")[24] against petitioner.[25] The FLD/FANs assessed petitioner of deficiency income taxes and value-added taxes ("**VAT**") amounting to

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[17] Annex "E", Petition for Review, Docket – Vol I, p. 50.
[18] Exhibit "R-6", *id.*, p. 158; Annex "F", Petition for Review, Docket – Vol. I, p. 51
[19] Exhibit "R-9", *id.*, p. 187.
[20] Exhibit "P-6", Docket – Vol. I, pp. 52-53.
[21] Exhibit "P-7", *id.*, p. 54.
[22] Exhibit "P-8", *id.*, p. 55.
[23] Exhibit "P-9", *id.*, pp. 56-57.
[24] Exhibit "R-17", BIR Records, pp. 272-274.
[25] Exhibit "P-10", Docket – Vol. I, pp. 59-60.

₱5,254,723.01, inclusive of surcharge and interest, broken down as follows:

	Basic	Surcharge	Interest	Total
Income Tax	₱435,800.89	₱108,950.22	₱203,372.59	₱748,123.70
VAT	2,559,105.03	639,776.26	1,307,718.02	4,506,599.31
Total	₱2,994,905.92	₱748,726.48	₱1,511,090.61	₱5,254,723.01

On August 14, 2017, petitioner sent a Letter to RD Tanggor signed by petitioner's Chairman of the Board,[26] which RD Tanggor referred to as petitioner's "protest" against the BIR deficiency Income and Value-Added Taxes assessment for TY 2014.

On October 12, 2017, petitioner received the Final Decision on Disputed Assessment ("**FDDA**") dated October 3, 2017, signed by RD Tanggor.[27]

On November 10, 2017, petitioner filed an *Appeal/Request for Reconsideration*[28] with the CIR against the FDDA it received on October 12, 2017.

PROCEEDINGS BEFORE THE COURT

On May 22, 2018, petitioner posted its *Petition for Review*.[29]

On July 19, 2018, the Court required petitioner to pay the full amount of docket fees.[30] Petitioner then posted a *Letter* relative to the docket fees deficiency of ₱27,958.98, with enclosed 15 postal money orders from Surigao Post Office on July 30, 2018.[31] On August 23, 2018, the Court sent another *Letter* to petitioner in relation to the payment of docket fees.[32] Petitioner posted its *Compliance* on September 3, 2018.[33]

On September 24, 2018, petitioner posted an *Urgent Motion to Suspend Collection of Taxes or Issuance of Status Quo*

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[26] BIR Records, p. 275.
[27] FDDA dated October 3, 2017, Exhibit "P-11", Docket – Vol. I, p. 62.
[28] Exhibit "P-3", *id.*, pp. 33-45.
[29] Docket – Vol. I, pp. 10-29.
[30] *Id.*, p. 84.
[31] *Id.*, pp. 94-98.
[32] *Id.*, pp. 128-129.
[33] *Id.*, p. 131.

Ante Order.[34] Thus, on October 2, 2018, the Court issued a *Summons*[35] and *Notice of Hearing.*[36]

On October 25, 2018, respondent Regional Director Jose Eric C. Furia ("**RD Furia**") filed his *Answer.*[37]

On October 26, 2018, respondent CIR filed his *Motion for Additional Time to File Answer*,[38] which the Court granted in a *Resolution* dated November 7, 2018.[39] Again, on November 26, 2018, respondent CIR filed another *Motion for Additional Time to File Answer*,[40] which the Court granted in a *Resolution* dated December 3, 2018.[41]

On December 6, 2018, petitioner's counsel presented **Jennylyn H. Ladia,** who testified on direct examination by way of a *Judicial Affidavit.* Thereafter, petitioner was ordered to file its *Formal Offer of Evidence* in relation to the *Urgent Motion to Suspend Collection of Taxes or Issuance of Status Quo Ante Order.*[42]

On December 19, 2018, respondent CIR filed his *Answer.*[43]

On December 27, 2018, the Court received petitioner's *Formal Offer of Exhibits.*[44]

On January 4, 2019, respondents filed their *Compliance*, transmitting the BIR Records consisting of 415 pages in one (1) folder,[45] noted in a *Minute Resolution* dated January 7, 2019.[46]

On January 11, 2019, respondents filed their *Comment with Opposition to the Motion to Suspend Collection of Taxes.*[47] Petitioner's *Urgent Motion to Suspend Collection of Taxes or Issuance of Status Quo Ante Order* was submitted for resolution on January 18, 2019.[48]

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[34] *Id.*, pp. 147-151.
[35] *Id.*, p. 158.
[36] *Id.*, p. 157 and 159.
[37] *Id.*, pp. 162-177.
[38] *Id.*, pp. 233-235.
[39] *Id.*, pp. 239-240.
[40] *Id.*, pp. 242-244.
[41] *Id.*, p. 247.
[42] *Id.*, p. 248.
[43] *Id.*, pp. 270-275.
[44] *Id.*, pp. 278-282.
[45] *Id.*, pp. 308-309.
[46] *Id.*, p. 311.
[47] *Id.*, pp. 312-318.
[48] *Id.*, p. 323.

On March 21, 2019, respondents filed their *Pre-Trial Brief*[49] and *Motion to Defer Submission of Judicial Affidavit.*[50] On the same day, petitioner filed its *Pre-Trial Brief.*[51]

On March 25, 2019, the Court received the *Judicial Affidavits* of Susan C. Gernale,[52] Felipa M. Asis,[53] and Jennylyn H. Ladia.[54]

On March 27, 2019, the Court ruled on petitioner's *Formal Offer of Exhibits* and granted its Urgent *Motion to Suspend Collection of Taxes or Issuance of Status Quo Ante Order.*[55]

On March 28, 2019, the case was referred to the Philippine Mediation Center - Court of Tax Appeals ("**PMC-CTA**"); the pre-trial conference was cancelled and reset to July 4, 2019.[56]

On April 8, 2019, petitioner filed a *Motion for Extension of Time to Post Bond*,[57] which the Court granted in a *Resolution* dated April 16, 2019.[58]

On June 10, 2019, respondents filed a *Submission*[59] with the attached *Judicial Affidavit* of Ma. Abelly Barcelon.[60] This was noted in a *Minute Resolution* dated June 13, 2019.[61]

Records Verification dated August 1, 2019, reveals that the parties failed to inform the Court whether they have reached an amicable settlement.[62] Thus, on August 14, 2019, the Court promulgated a *Resolution* setting the pre-trial conference for November 12, 2019.[63]

On August 23, 2019, the Court received the *Mediator's Report* stating that the parties failed to enter into a compromise agreement.[64]

[49] *Id.*, pp. 338-342.
[50] *Id.*, pp. 333-336.
[51] *Id.*, pp. 324-330.
[52] *Id.*, pp. 488-491.
[53] Exhibit "P-23", *id.*, pp. 428-432.
[54] Exhibit "P-1", *id.*, pp. 345-350.
[55] *Id.*, pp. 497-504.
[56] *Id.*, p. 505.
[57] *Id.*, pp. 511-513.
[58] *Id.*, p. 516.
[59] *Id.*, pp. 520-522.
[60] Exhibit "R-20", *id.*, pp. 524-531.
[61] *Id.*, p. 533.
[62] *Id.*, p. 537.
[63] *Id.*, p. 539.
[64] *Id.*, p. 540.

Records Verification dated October 30, 2019 reveals that petitioner failed to comply with the Court's *Resolution* dated September 2, 2019.[65] With this, the Court promulgated its *Resolution* lifting and setting aside its March 27, 2019 *Resolution* granting petitioner's *Urgent Motion to Suspend Collection of Taxes or Issuance of Status Quo Ante Order.*[66]

On November 12, 2019, both parties were ordered to submit their Joint Stipulation of Facts and Issues ("**JSFI**").[67]

On November 27, 2019 and December 2, 2019, the Court received petitioner's *Earnest Motion for Reconsideration*[68] and *Compliance to the Undertaking in the Earnest Motion for Reconsideration,* respectively.[69] Respondent CIR filed his *Opposition* on December 18, 2019.[70] Petitioner's *Earnest Motion for Reconsideration* was submitted for resolution on January 9, 2020.[71]

On February 10, 2020, the Court directed petitioner to submit a Certificate of Compliance with Memorandum Circular No. 1-77, issued by the Insurance Commission, and proof of payment of legal fees under the Rules of Court and value-added tax under the NIRC of 1997.[72]

The *Records Verification* dated February 12, 2020, reveals that both parties failed to file their *JSFI.*[73] Thus, the Court declared the filing of the *JSFI* as waived by the parties in its *Resolution* dated February 17, 2020.[74]

On March 9, 2020, the Court issued a *Pre-Trial Order.*[75]

On March 10, 2020, petitioner's counsel manifested that Ms. Felipa M. Asis could not testify as she was suffering from "community acquired pneumonia – moderate." The hearing was cancelled.[76]

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[65] *Id.*, p. 551.
[66] *Id.*, pp. 553-554.
[67] Order, *id.*, pp. 556-557.
[68] *Id.*, pp. 559-561.
[69] *Id.*, p. 597.
[70] *Id.*, pp. 641-643.
[71] *Id.*, p. 647.
[72] *Id.*, pp. 755-758.
[73] *Id.*, p. 759.
[74] *Id.*, pp. 761-762.
[75] *Id.*, pp. 765-770.
[76] *Id.*, p. 771.

On May 26, 2020, the Court received petitioner's *Compliance to the Resolution dated Feb. 10, 2020.*[77]

On June 26, 2020, the Court granted petitioner's *Earnest Motion for Reconsideration* and reinstated the March 27, 2019 *Resolution* granting petitioner's *Urgent Motion to Suspend Collection of Taxes or Issuance of Status Quo Ante Order.*[78]

On April 28, 2021, petitioner's counsel presented Ms. Felipa M. Asis and Ms. Susan C. Gernale, who testified on direct examination by way of their respective Judicial Affidavits.[79]

On June 3, 2021, the Court received petitioner's *Manifestation with Formal Offer of Exhibits,* [80] of which respondents failed to file their comment despite notice. Thus, on December 11, 2021, the Court ruled on petitioner's *Formal Offer of Exhibits* admitting Exhibit P-1.[81]

On their turn to present evidence, respondents presented RO Barcelon, who testified on direct examination by way of a Judicial Affidavit.[82]

Thereafter, or on November 23, 2022, respondents filed their *Formal Offer of Evidence,*[83] which the Court resolved in the Resolution promulgated on January 25, 2023. In the same Resolution, the parties were ordered to file their respective memoranda.

On February 23, 2023, respondent CIR filed his *Memorandum,*[84] while petitioner filed its own on March 7, 2023.

The instant case was then submitted for decision on March 24, 2023.[85]

Hence, this *Decision.*

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[77] *Id.*, pp. 776-777.
[78] *Id.*, pp. 785-791.
[79] *Id.*, p. 878.
[80] *Id.*, pp. 888-897.
[81] *Id.*, pp. 939-943.
[82] Docket – Vol. III, p. 956.
[83] *Id.*, pp. 961-968.
[84] *Id.*, pp. 976-981.
[85] *Id.*, p. 1008.

THE ISSUE

As stipulated by the parties, the lone issue for this Court's resolution is:[86]

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY DEFICIENCY INCOME TAX AND VALUE ADDED-TAX IN THE AGGREGATE AMOUNT OF PHP5,314,723.01, FOR TAXABLE YEAR 2014.

PETITIONER'S ARGUMENTS

Petitioner claims that the gas pump operation is already part of its principal business.[87] It further claims that it is a multi-purpose cooperative engaged in rice and corn milling, trading, agricultural, and industrial production and that "energy has always been essential for the production of food."[88] It adds that "fuel is an important, if not indispensable, requirement to the main [business] of milling, trading, and agricultural and industrial production."[89]

Petitioner argues that its net surplus from the cooperative's operations is not profit but excess payment from members for the borrowed loans.[90] It also claims that Article 85 of RA No. 9520 did not make any distinction as to where the net surplus should come from; thus, it theorizes that the provision of non-taxability of surplus must be interpreted as referring to surplus from all income regardless of whether it is from related or unrelated business activity.[91] It further argues that its surplus does not constitute realized gain.[92]

Anent the validity of the LOA, petitioner contends that respondent's belated attempt to obtain the requisite authorization from the CDA does not cure the defect of the LOA. It further argues that the examination was conducted beyond the 120-day period provided by existing regulations.[93]

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[86] Pre-trial Conference Order held on November 12, 2019, Docket – Vol. II, pp. 556-557.
[87] Petitioner's *Memorandum*, par. 3.3.
[88] *Id.*, pars. 3.5 to 3.6.
[89] *Id.*, par. 3.8.
[90] *Id.*, par. 3.13.
[91] *Id.*, par. 3.14.
[92] *Id.*, par. 3.17.
[93] *Id.*, pars. 3.21 to 3.22.

RESPONDENT'S ARGUMENTS

Respondents counter that the income and value-added tax assessments have factual and legal bases. They insist that sales of fuel in its gasoline pumping station are a business line not within the scope of its registered activities until February 12, 2015, when its Amended Articles of Cooperation were approved by the Securities and Exchange Commission ("SEC"); thus, petitioner can be taxed therein.

Respondents argue that all presumptions favor the correctness of tax assessments and that the good faith of tax assessors and the validity of their actions are presumed.

THE COURT'S RULING

Before delving into the merits of the case, We shall first determine whether the instant *Petition for Review* was timely filed and whether the Court has jurisdiction to take cognizance of this case.

The Court of Tax Appeals ("CTA") has no jurisdiction over the instant Petition.

Jurisdiction is defined as the power and authority of a court 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, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by the erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, its only power is to dismiss the action.**[94]

Section 7(a)(1) and (2) of RA No. 1125,[95] as amended by RA No. 9282,[96] confers jurisdiction to this Court relative to

[94] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*. G.R. No. 209830, June 17, 2015.
[95] An Act Creating the Court of Tax Appeals. June 16, 1954.
[96] 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.

decisions and *inactions* of the CIR and states the manner of appealing the same, to wit:

> "SEC. 7. *Jurisdiction*. – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the <u>Commissioner of Internal Revenue</u> 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 <u>Commissioner of Internal Revenue</u> 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*]

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. – **Any <u>party adversely affected</u> by a *decision*, ruling, or *inaction* of the Commissioner of Internal Revenue...may file an appeal with the CTA within <u>thirty (30) days</u> after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** [*Emphasis supplied*]

The above provisions are likewise provided under Section 3(a)(1)(2), Rule 4,[97] and Section 3(a), Rule 8[98] of the RRCTA.

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[97] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original 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 <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(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 or other applicable law provides a specific period for action: ...

[98] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period

Based on the above provisions, this Court has appellate jurisdiction over *decisions*, rulings, or *inactions* of respondent. The appeal must be filed by the party adversely affected within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Records reveal that petitioner filed the present *Petition for Review* due to the alleged inaction of respondent CIR on its Appeal/Request for Reconsideration of the FDDA dated October 3, 2017, which it received on October 12, 2017. The *Petition for Review* states:[99]

> 2.1. This case is a Petition for Review pursuant to Sec. 3(a)(2), Rule 4 of A.M. No. 05-11-07-CTA on the inaction of respondent [CIR] on the Appeal/Request for Reconsideration of the [FDDA] issued by respondent BIR Regional Director against petitioner.
>
> 2.2 On November 10, 2017, petitioner seasonably filed an Appeal/Request for Reconsideration, pursuant to RMO No. 26-2016, with the [CIR], the [FDDA] it received on October 12, 2017. ...
>
> 2.3 The 180 days period provided for under Sec. 228 of RA 8424, [RR] No. 12-99 and RMO 26-2016 has already lapsed on May 10, 2018 counted from November 10, 2017 without any resolution or decision on the Appeal/Request for Reconsideration. ...
>
> 2.4. Petitioner has 30 days from the lapse of the 180-day period within which to file this petition in accordance with RA 8424 and A.M. No. 05-11-07-CTA. Hence, this Petition for Review.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner upon which a taxpayer may protest an assessment, including a remedy to seek redress of the inaction or decision on the disputed assessment, *viz.*:

> *Section 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: ... .
>
> 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

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fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[99] Pars. 2.1. to 2.3., Petition for Review, *supra* at note 1.

> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. [*Emphasis and underscoring supplied*]

Correspondingly, Revenue Regulations ("**RR**") No. 12-1999, [100] as amended by RR No. 18-2013, [101] implements Section 228 and provides the taxpayer's options on disputed assessments, to wit:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent **may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof**. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> ... ...
>
> If the ***protest*** is denied, in whole or in part, by the Commissioner's duly authorized representative, 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** 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.
>
> If the ***protest*** is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may ***either***: (i) **appeal to the**

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[100] 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, September 6, 1999.
[101] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.

> **CTA** within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) **await the final decision of the Commissioner's duly authorized representative** on the disputed assessment.
>
> If the ***protest*** or ***administrative appeal***, as the case may be, is denied, in whole or in part, by the Commissioner, 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.
>
> If the ***protest*** or ***administrative appeal*** is **not acted upon by the Commissioner** within one hundred eighty (180) days counted from the **date of filing of the protest**, the taxpayer may ***either***: (i) **appeal to the CTA** within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) **await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other. *[Emphasis supplied]*

In determining the timeliness of an appeal from the *inaction* of the CIR, a plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-1999, as amended, reveals that there is only **one (1) "180-day period" of inaction** to speak of which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and ***not*** from the date when the decision of the CIR's duly authorized representative was appealed to the CIR.[102]

[102] *Larry E. Segaya Les Engineering and Construction v. Commissioner of the Bureau of Internal Revenue*, CTA *EB* Case No. 2526, December 13, 2022.

There is nothing in Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999,[103] as amended, which provides for *a separate 180-day period* for the CIR's representative to act on the protest and *another 180-day period for the CIR to decide the appeal* on the decision rendered by the CIR's duly authorized representative for the purpose of computing the 30-day period within which to appeal to the CTA.[104]

The Supreme Court's pronouncement in the case of *Nueva Ecija II Electric Cooperative, Inc. Area II v. Commissioner of Internal Revenue (NEECO II)*[105] is highly instructive, *viz.*:

> ... Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for **alternative courses of action** to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner on Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. However, **nowhere in said provision does it provide that *a fresh 180-day period* is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. *[Emphasis supplied]*

Based on the foregoing legal and jurisprudential pronouncements, if the CIR's duly authorized representative denies the taxpayer's protest, a taxpayer is given **two (2) alternative remedies**, either to: *first*, appeal to the CTA within 30 days from the date of receipt of the representative's decision; or, *second*, elevate the protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal," *i.e.*, **await the final decision of the CIR on the disputed assessments, and appeal such final decision to the CTA within 30 days from receipt of a copy of such decision**.

In the present case, RD Tanggor issued the FLD/FANs against petitioner on July 18, 2017.[106] In response, petitioner

[103] *Supra* at note 100.
[104] *Id.*
[105] G.R. No. 258101 (Notice). April 19. 2022.
[106] *Supra* at note 25.

sent a *Letter* dated August 14, 2017 to RD Tanggor, which the latter treated as a *Protest* against its deficiency Income and Value-Added Taxes assessment for TY 2014.[107]

To reiterate, under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, the Regional Director, as the CIR's duly authorized representative, has 180 days counted from the date of filing of the protest to act on it. Thus, assuming petitioner's *Protest Letter* dated August 14, 2017 was received by the BIR on the same day, the 180-day period for the Regional Director to act or decide on it expired on February 10, 2018.

On October 3, 2017, or long *before* the lapse of the 180-day period, RD Tanggor issued the FDDA, which petitioner received on October 12, 2017. Undoubtedly, in this case, there was no *inaction* within 180 days but a *denial of the protest* by the CIR's duly authorized representative.

Subsequently, on November 10, 2017, petitioner filed an *Appeal/Request for Reconsideration,* otherwise known as administrative appeal, with the CIR.[108] It bears to emphasize that the administrative appeal was timely filed within 30 days from petitioner's receipt of the FDDA on October 12, 2017. Thus, petitioner is deemed to have chosen the *second remedy, i.e.*, to await the CIR's final decision on the administrative appeal, and appeal the decision with the CTA within 30 days from receipt thereof.

However, without waiting for the CIR's final decision, petitioner filed the instant *Petition for Review* on May 22, 2018[109] allegedly due to the *inaction* of the CIR on the said administrative appeal.[110] It contends that the 180-day period, counted from the filing of the administrative appeal on November 10, 2017, lapsed on May 10, 2018, without any resolution or decision on the administrative appeal; thus, it had 30 days from May 10, 2018 to file this petition.[111]

Under the circumstances, the Court finds that petitioner erroneously applied the 180-day period; consequently, the instant *Petition for Review* was prematurely filed. Evidently,

[107] FDDA dated October 3, 2017, *supra* at note 27.
[108] Exhibit "P-3", *id.*, pp. 33-45.
[109] *Supra* at note 29.
[110] Docket – Vol. I, pp. 10-29.
[111] Pars.2.3.to 2.4., Petition for Review, *supra* at note 1.

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there is no final decision reviewable before this Court as petitioner mistakenly reckoned the 30-day period to appeal to the CTA from May 10, 2018, or after the lapse of the 180-day period from the filing of the administrative appeal.

As discussed above and guided by the Supreme Court's pronouncement in the *NEECO II* case, there is **only one (1) "180-day period" of inaction to** speak of, which shall be counted from the date of filing of the *protest* and not from the date of filing of *administrative appeal*. Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-1999, do not provide that **a fresh 180-day period** is granted to the CIR to act on an administrative appeal."

Given the foregoing, We rule that, **without an appealable decision from the CIR**, this Court could not validly obtain jurisdiction over the present *Petition for Review*. Petitioner's only recourse would be to await respondent's final decision on its administrative appeal and appeal the same before the CTA within 30 days from receipt thereof.

It bears emphasis that 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. To reiterate, 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.[112]

Anent the *Final Notice Before Seizure* (**"FNBS"**) dated August 20, 2018 issued by RD Furia,[113] the pronouncement of the Supreme Court in the *Light Rail Transit Authority v. Bureau of Internal Revenue*[114] is instructive, *viz.*:

> Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or

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[112] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.
[113] Exhibit "R-19", BIR Records, pp. 408-409.
[114] G.R. No. 231238, June 20, 2022.

> Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. **They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect**. [*Emphasis and underscoring supplied.*]

Clearly, the assessment is still pending appeal with the CIR when the FNBS was issued, which means that the same emanated from a "non-demandable assessment." Hence, having been issued prematurely, the FNBS issued in this case is void and has no force and effect.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* filed by Bayugan Farmers Millers Multi-Purpose on March 29, 2019, is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Special 2nd Division Acting 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