REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ADELARDO K. PAGENTE, Petitioner,	**CTA CASE NO. 8280**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
HON. ESMERALDA M. TABULE, HON. NELSON ASPE, HON. KIM JACINTO-HENARES, BUREAU OF INTERNAL REVENUE, Respondents.	**Promulgated:** FEB 05 2013 9:25 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This case involves a Petition for Review filed by petitioner Adelardo K. Pagente to appeal the ruling dated March 10, 2011, issued by the Regional Director of the Bureau of Internal Revenue (BIR), Revenue Region (RR) No. 16, acting for and in behalf of the Commissioner of Internal Revenue.

Petitioner Adelardo K. Pagente is a taxpayer with resident and office address at Forever Books Learning Enterprises, Zone 6, National Highway, Bulua, Cagayan de Oro City.[1]

Respondents are officials of the Bureau of Internal Revenue, the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[2] Respondent Esmeralda M. Tabule is being sued in her official capacity as

[1] Par. 1, Statement of Material Facts, Memorandum For The Petitioner, docket, p. 000305.
[2] Section 2 of the National Internal Revenue Code of 1997, as amended.

the Regional Director of RR No. 16. Respondent Nelson Aspe is being sued in his official capacity as the Deputy Commissioner-BIR Operations Group. Respondent Kim Jacinto-Henares is being sued in her official capacity as the Commissioner of Internal Revenue (CIR).

On March 24, 2008, Letter of Authority (LOA) No. 2001 00057472[3] signed by Regional Director Mustapha M. Gandarosa of Revenue Region No. 16 was issued against petitioner, authorizing Revenue Officer Victoria M. Maandig of Revenue District Office (RDO) No. 98, Cagayan de Oro City, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2006 to December 31, 2006.[4]

On July 22, 2008, a Notice of Informal Conference[5] signed by Revenue District Officer Ester S. Palala was issued against petitioner, informing petitioner of his tax liabilities for calendar year 2006 in the amount of Php2,312,370.50, representing deficiency income tax and value-added tax (VAT), inclusive of interests and penalties. Said Notice of Informal Conference also states that petitioner has fifteen (15) days from notice within which to present his side in writing, otherwise, petitioner shall be considered in default and a formal letter of demand and assessment notice shall be issued against petitioner.

On August 27, 2008, Revenue District Officer Palala issued a Notice to Taxpayer (amended)[6] informing petitioner that after re-assessment of his tax liabilities for calendar year 2006, there has been found from petitioner deficiency income tax and VAT in the total amount of Php1,906,943.00, inclusive of interests and compromise penalties. Petitioner was again given a period of fifteen (15) days from notice within which to present his side in writing.

On October 20, 2008, then Commissioner of Internal Revenue, Lilian B. Hefti, issued Revenue Travel Assignment Order (RTAO) No. 212-2008 relieving Mr. Gandarosa of his present duty as Regional Director of Revenue Region No. 16 and directing him to report to his new assignment as Chief of Staff, Special Concerns.[7]

On November 3, 2008, Mr. Gandarosa filed a Petition for Certiorari and/or Prohibition with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order/Status Quo Ante Order

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[3] Exhibit "7", BIR Records, p. 55.
[4] Par. 3, Joint Stipulation of Facts, docket, p. 000150.
[5] Exhibit "11", BIR Records, pp. 63 to 64.
[6] Exhibit "12", BIR Records, pp. 69 to 70.
[7] Par. 4, Joint Stipulation of Facts, docket, p. 000150-A.

against Lilian B. Hefti, *et al.*, docketed as SP Civil Case No. 010-07-2008, before the Regional Trial Court (RTC) of Tubod, Branch 7, Lanao del Norte.[8]

On November 3, 2008, Judge Alan L. Flores of RTC Branch 7 issued a temporary restraining order (TRO) enjoining Sixto S. Esquivias IV (then incumbent CIR), Margarito B. Teves (then incumbent Secretary of the Department of Finance) and Lilian B. Hefti (former CIR) from implementing RTAO No. 212-2008.[9] On November 7, 2008, Judge Flores issued an Order extending the TRO issued on November 3, 2008 until November 23, 2008.[10]

On November 21, 2008, Judge Flores issued a writ of preliminary injunction enjoining Sixto S. Esquivias IV and Margarito B. Teves from enforcing RTAO No. 212-2008.[11]

On November 28, 2008, Sixto S. Esquivias IV, as the then incumbent CIR, issued RTAO No. 221-2008, with the approval of Margarito B. Teves, then incumbent Secretary of Finance, reiterating the earlier directive to Mr. Gandarosa to report to his new assignment as Chief of Staff, Office of the Deputy Commissioner, Special Concerns Group.[12] Atty. Alberto S. Olasiman was temporarily designated by Nelson Aspe (Deputy Commissioner, Operations Group) as Officer-in-Charge (OIC) in the leadership, administration and management of Revenue Region No. 16.

On December 2, 2008, Mr. Gandarosa filed an action to cite Sixto S. Esquivias IV and Margarito B. Teves in indirect contempt before Judge Flores of RTC Branch 7 docketed as SP Civil Case No. 011-07-2008.[13]

On December 22, 2008, Judge Flores issued Omnibus and Interim Order impleading then OIC-Regional Director Olasiman and BIR Deputy Commissioner Nelson Aspe as respondents in the contempt charge and enjoining Sixto S. Esquivias IV and Margarito B. Teves and their subordinate officials and agents from issuing another RTAO that would tend to disturb the *status quo*, pending the final determination by the RTC Branch 7 in the main Petition for Certiorari filed by Mr. Gandarosa and holding that the several Memoranda issued by then OIC-Regional Director Olasiman are void, as the same were issued without authority.[14]

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[8] Annex F, Petition for Review, docket, pp. 41 to 42.
[9] *Id.*, p. 40 and pp. 43 to 44.
[10] *Id.*, p. 45.
[11] *Id.*, p. 47.
[12] *Id.*, p. 48; Par. 6, Joint Stipulation of Facts, docket, p. 000150-A.
[13] Annex F, Petition for Review, docket, p. 48.
[14] *Id.*, p. 49

As a consequence, Sixto S. Esquivias IV, Margarito B. Teves, Lilian B. Hefti, Nelson M. Aspe, and Alberto S. Olasiman filed with the Court of Appeals (CA), Mindanao Station, a Petition for Certiorari with Prayers for the Issuance of the TRO and/or Writ of Preliminary Injunction, which was docketed as CA G.R. SP No. 02753-MIN.[15]

Meanwhile, Mr. Gandarosa issued Preliminary Assessment Notice dated January 7, 2009[16], assessing petitioner for deficiency income tax and VAT for calendar year 2006 in the amount of Php2,047,186.90, inclusive of interest and compromise penalty.[17]

On February 11, 2009, the CA granted a 60-day TRO enjoining Judge Flores from implementing, among others, the assailed Resolution/Orders dated November 3, 2008, November 21, 2008 and November 25, 2008 and from further proceeding with Special Civil Case Nos. 010-07-2008 and 011-07-2008.[18]

In the meantime, respondent Esmeralda M. Tabule was assigned as the new Regional Director of RR No. 16.[19]

On March 25, 2009, respondent Regional Director Tabule honored the PAN issued by Mr. Gandarosa[20] and issued a Formal Letter of Demand[21] (FLD) and Final Assessment Notices[22] (FAN) against petitioner assessing petitioner for deficiency income tax and VAT for calendar year 2006 in the amount of Php2,119,691.60, inclusive of interest and compromise penalty.

On March 27, 2009, the CA issued a Resolution granting the issuance of the writ of preliminary injuction in favor of Sixto S. Esquivias IV, Margarito B. Teves, Lilian B. Hefti, Nelson M. Aspe, and Alberto S. Olasiman, pending the hearing on the merits in the main petition.[23]

On August 3, 2009, the CA promulgated its decision granting the Petition for Certiorari filed by Sixto S. Esquivias IV, Margarito B. Teves, Lilian B. Hefti, Nelson M. Aspe, and Alberto S. Olasiman, annulling and setting aside the Orders issued by Judge Flores, permanently enjoining the

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[15] *Id.*
[16] Exhibit "13", BIR Records, pp. 95 to 96;
[17] Par. 13, Joint Stipulation of Facts, docket, p. 000151.
[18] Annex E, Petition for Review, docket, pp. 32 to 34.
[19] Par. 10, Joint Stipulation of Facts, docket, p. 000151.
[20] Par. 14, *Id.*
[21] Exhibit "14", BIR Records, pp. 98 to 99; Par. 14, Joint Stipulation of Facts, docket, p. 000151.
[22] Exhibit "15", BIR Records, pp. 100 to 101.
[23] Annex F, Petition for Review, docket, p. 52.

latter from further proceeding with SP Civil Case Nos. 010-07-2008 and 011-07-2008, and ordering Judge Flores to dismiss said cases.[24]

On February 18, 2010, petitioner wrote a letter[25] addressed to Regional Director Tabule, through Revenue District Officer Ester S. Palala, alleging that he was informed by a collection agent that he has a tax deficiency, which is already due and demandable. In said letter, petitioner denied that he received the FLD, the FAN, and the Notice of Delinquency. Petitioner requested that the tax assessment against him should not be posted as delinquent because the thirty-day period to file a protest has not yet commenced to run.

On March 26, 2010, Habari L. Balt, the OIC-Chief of Legal Division of Revenue Region No. 16, issued a Memorandum[26] addressed to Revenue District Officer Palala stating that:

> "A careful reading of the available records reveals that the Final Assessment Notice (FAN) as well as the Formal Letter of Demand, all dated March 25, 2009, were forwarded to the Mailing Section of the Administrative Division on April 1, 2009, and subsequently delivered to the Post Office for mailing to the subject taxpayer at his given address on April 2, 2009. Section 10, Rule 13 of the Rules of Court provides that *'Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the Court otherwise provides.'* Therefore, the 30-day period granted by law to the taxpayer for filing his protest should be reckoned ten days after April 2, 2009, thus, from April 12, 2009. Accordingly, Mr. Pagente has until May 12, 2009 within which to file his protest. However, it was only on February 18, 2010, or more than nine months from receipt of the FAN that Mr. Pagente protested such assessment, by refuting receipt of the abovementioned notices. In other words, said protest was filed beyond the 30-day period prescribed under Section 228 of the Tax Code, as amended. Such being the case, it is now safe to conclude that said protest was considered to have been filed out of time.
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> Hence, in view of the foregoing premises, this Office opines that subject assessment has become final, executory and unappealable; thus, the issuance of the notice of delinquency should not be disturbed."

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[24] *Id.*, pp. 38 to 70.
[25] Annex "G", Petition for Review, docket, p. 71.
[26] Annex "H", Petition for Review, docket, p. 72.

On May 28, 2010, Revenue District Officer Palala wrote a letter[27] informing petitioner of the legal opinion issued by the OIC-Chief of Legal Division of Revenue Region No. 16, through a Memorandum noted by the Regional Director. Said letter dated May 28, 2010 states that:

> "Last February 19, 2010 we received your letter dated February 18, 2010 requesting that your tax assessment should not be posted as delinquent. On March 4, 2010 your docket was forwarded to the Regional Office, thru the Chief, Legal Division for legal opinion and comment. Finally, on April 7, 2010 your docket was returned to us for continuance of collection proceedings. Attached is a copy of the Memorandum from the Chief, Legal Division dated March 26, 2010 for your perusal.
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> In view thereof, we are requesting you to settle your tax liabilities within ten (10) days from receipt of this notice. Failure to do so will constrain us to execute the civil remedies provided under Section 205 of Republic Act No. 8424 otherwise known as the National Internal Revenue Code of the Philippines."

During a personal follow-up made by petitioner on June 22, 2010, he was given a copy of said Memorandum dated March 26, 2010.[28]

On November 8, 2010, petitioner filed a request for ruling[29] addressed to respondent CIR, requesting the latter to rule on the following issues:

> "1.) May a Preliminary Assessment Notice be validly issued by Regional Director after he has been transferred pursuant to Revenue Travel Assignment Order duly issued?
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> 2.) May a Formal Letter of Demand and Final Assessment Notice be sent through ORDINARY MAIL?
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> 3.) May an assessment ripen into finality (to become executory and demandable) despite failure of service thereof upon the taxpayer?

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[27] Annex "I", Petition for Review, docket, p. 73.
[28] Par. 19, Concise Statement of the Complete Facts, Petition for Review, docket, p. 11.
[29] Annex "J", Petition for Review, docket, pp. 74 to 82.

4.) If any of the issues above is answered in the negative, what will be its effect upon the assessment?

5.) May Warrant of Distraint and Levy (WDL) be validly issued without prior NOTICE OF DELINQUENCY issued to the taxpayer?"

On December 20, 2010, respondent Nelson Aspe as the Deputy Commissioner-Operations Group referred said request to Revenue Region No. 16 for necessary action.[30]

In a letter[31] dated March 10, 2011, respondent Regional Director Tabule ruled as follows:

"*For issue No. 1*, it is worth stressing that when Revenue Travel Assignment Orders No. 212-2008 and No. 221-2008 were issued, the then Regional Director Mustapha M. Gandarosa was able to secure a temporary restraining order or TRO from the sala of Judge Allan Flores, Presiding Judge of Regional Trial Court, Branch 7 in Tubod, Lanao del Note and later on a preliminary mandatory injunction.

The issuance of the TRO and the preliminary mandatory injuction put everything under ***'status quo'***. **Until such time that the Court of Appeals, Mindanao Station, resolved with finality the issue of the legality of the TRO and the preliminary mandatory injunction, as the taxpayer himself mentioned in his letter, the acts made by the Regional Director at that time when the TRO/Preliminary Mandatory Injunction were still enforced, were *'prima facie'* legal.** Hence, the issued Preliminary Assessment Notice (PAN) under the abovestated circumstances has likewise assumed legality at the time it was issued.

For issue No. 2, there seemed to be a mistake, albeit immaterial and irrelevant, in our letter-opinion dated March 26, 2010, when we cited the second sentence of Section 10, Rule 13 of the Rules of Court re ***service by ordinary mail***. It is the third sentence of said Section 10, Rule 13 re ***service by registered mail*** that should have been cited; but out of inadvertence, we misquoted the second sentence. However,

[30] Annex "K", Petition for Review, docket, p. 91.
[31] Annex "A", Petition for Review, docket, pp. 24 to 25.

as earlier mentioned, said mistake is clearly extraneous and irrelevant in this case. Thorough evaluation of the documents show that our Final Assessment Notice (FAN) as well as the Formal Letter of Demand, all dated March 25, 2009, ***were all sent though registered mail*** on April 2, 2009, as evidenced by the Master List of Registered Mail prepared by the Mailing Section of this Office under **Registry Number 7549, duly signed by the one In-Charge of registered mail in the Bureau of Post at that time**, attached hereto and marked as '**Annex A'**.

Thus, applying correctly the third sentence of Section 10, Rule 13 of the Rules of Court xxx, the 30-day period granted by law for you to file your protest should be reckoned upon your actual receipt of our FAN, or five days after April 2, 2009, thus, from April 7, 2009, whichever date is earlier. Accordingly, you could have, at the very latest, until May 7, 2009, within which to file your protest. However, it was only on February 18, 2010, or more than nine months from receipt of the FAN that you protested such assessment, by refuting receipt of the abovementioned notices. In other words, said protest was, just the same, still, filed beyond the 30-day period prescribed under Section 228 of the Tax Code, as amended.

For issues 3, 4, and 5, obviously the answer is all in the affirmative. Your failure to validly protest the Final Assessment Notice within the 30-day period by virtue of Section 228 of the 1997 Tax Code, rendered the abovestated assessment **final, executory and demandable**. Thus, your contention that the 30-day period to file your protest did not commence to run, has already been negated by the abovestated clarifications.

Relatively, the Warrant of Distraint and Levy is but an off-shoot to the process of assessment whereby upon attaining finality, the collection process of the abovestated deficiency taxes through summary remedies were duly executed by this Office.

PREMISES CONSIDERED, this letter hereby disaffirmed your opinion. Hence, we look forward to the settlement of your tax delinquencies to the Government of the Philippines the soonest possible time."

On March 31, 2011, petitioner received said letter dated March 10, 2011.[32] Thus, on April 19, 2011, petitioner filed the instant Petition for Review praying that the letter dated March 10, 2011 be reversed, the tax assessment be cancelled, and the tax delinquency be lifted.[33]

On June 10, 2011, respondents filed their Answer[34] to the Petition for Review and raised the following special and affirmative defenses:

> "9. Respondent respectfully submits that the Honorable Court has no jurisdiction to entertain the instant Petition for Review on respondent's ruling dated March 10, 2011 (Annex 'A' of petitioner's Petition for Review). This is because said ruling is not deemed to be respondent's final decision on the disputed assessments. The said ruling is merely a legal opinion on petitioner's request for ruling for confirmation on certain issues affecting his alleged constitutional rights relative to the investigation and collection of his deficiency taxes for taxable year 2006. This was clearly stated in petitioner's letter dated November 8, 2010 (Annex 'J' of petitioner's Petition for Review).
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> 'Section 7(1) of Republic Act No. 9282 xxx provides that:
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> > Section 7. Section 7 of the same Act is hereby amended to read as follows:
> >
> > Sec. 7. Jurisdiction. – The CTA shall exercise:
> >
> > 'a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > '1. <u>Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments</u>, 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; (Underscoring Supplied) *Jc*

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[32] Par. 1, Material Dates, Petition for Review, docket, p. 4.
[33] Petition for Review, docket, pp. 4 to 23.
[34] Docket, pp. 000105 to 000117.

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In the above underscored provision, it is clearly provided that the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal the Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments.

In the instant case, there is no respondent's final decision on disputed assessment issued because of petitioner's failure to file a protest against respondent's FAN and FLD within the 30-day period as specifically provided for under Section 228 of the NIRC of 1997, as amended.

At this moment, it must be noted that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It can be challenged at any stage of the proceeding and for lack of it, a court can dismiss a case ex mero motu (CIR vs. Leonardo S. Villa and the Court of Appeals, G.R. No. L-23988, January 2, 1968). Further, the Court of Tax Appeals is a court of special jurisdiction and as such it can take cognizance only such matters as clearly within its jurisdiction (CIR vs. Villa, et al. supra).

10. Likewise, said petitioner's request for ruling does not toll the 30-day period to appeal to the CTA applying the principles laid down by the Supreme Court in the case of Fishwealth Canning Corporation vs. CIR (G.R. No. 179343, January 21, 2010). Hence, respondent's Final Assessment Notice (FAN) as well as Formal Letter of Demand (FLD), both dated March 25, 2009, which was sent by registered mail on April 2, 2009 to petitioner has already become final, executory and demandable upon expiration of the 30-day period to file protest pursuant [sic] Section 228 of the National Internal Revenue Code of 1997.

11. Petitioner was accorded due process of law in the issuance of its deficiency internal revenue taxes for the taxable year 2006.

First, respondent's Preliminary Assessment Notice (PAN) was validly issued by former Regional Director Mustapha Gandarosa (Director Gandarosa), then BIR Regional Director of BIR-RR 16, Cagayan De Oro City.

It [sic] worth stressing that when RTAO No. 212-2008 and 221-2008 were issued, Director Gandarosa was able to obtain a Temporary Restraining Order (TRO) from Regional Trial Court (RTC) Judge Allan Flores, Presiding Judge of RTC, Branch 7 in Tubod Lanao Del Norte and later on a preliminary mandatory injunction.

The issuance of the TRO and the Preliminary Mandatory Injunction put everything under 'status quo'. This continued until such time that the Court of Appeals, Mindanao Station, resolved with finality the issue of the legality of the TRO and the preliminary mandatory injunction. As petitioner mentioned in his letter, the acts made by the Regional Director at the time when the TRO/Preliminary injunction were still enforced, were prima facie legal. As such, the act of issuing PAN by Director Gandarosa must be considered binding even if such TRO was later annulled since he had color of authority when he issued the PAN. A contrary interpretation would mean interruption of vital governmental services and cause unnecessary delay in the much needed collection of taxes with petty arguments.

Furthermore, it must be presumed that Dir. Gandarosa may validly issue PAN under the hold-over principle. The application of the hold-over principle preserves continuity in the transaction of official business and prevents a hiatus in government pending the assumption of a successor into office as can been from the acts on [sic] Dir. Gandarosa in issuing PAN to petitioner herein. In *Topacio Nueno v. Angeles* 76 Phil. 12 (1946), it was held that cases of extreme necessity justify the application of the hold-over principle.

Second, respondent's (FAN) and Formal Letter of Demand (FLD) was [sic] properly and/or sufficiently served to petitioner.

Under Section 11 of Revenue Regulations (RR) No. 12-85, taxpayer's failure to give written notice of change of address bound him to whatever communications were sent to the address appearing in the tax returns for the period involved in the investigation, to wit:

xxx xxx xxx

Applying the provision in the instant case, petitioner is bound by whatever communications were sent to the address appearing to [sic] his tax returns (Page 54, of the BIR records) for the period involved in the investigation. This is because of petitioner's failure to present documentary evidence to prove the fact that he notified respondent of his change of business address as he categorically claimed and stated in his petition for review. This is found in paragraph 14 under the heading 'Reasons Relied Upon for the Review', which he alleged that '*In the case at bar, respondent failed to prove that he sent the formal assessment notice to **petitioner's new address.***' Because of petitioner's admission, he has the burden to prove that he has complied with requirements of Section 11 of RR No. 12-85 before questioning or denying the actual receipt of the FAN and FLD. Thus, under the circumstances, it should be considered that there is a valid FAN and FLD issued to petitioner which are considered as valid and binding.

As earlier discussed, petitioner's failure to present documentary evidence to prove that he formally notified respondent of his new address negate[s] petitioner's allegations that he was denied of due process for respondent's failure to send the FAN to his new address, and respondent's right to issue an assessment for taxable year 2006 has prescribed.

Also, respondent would like to point out in this case that petitioner never questioned or denied the receipt of PAN which was also sent by registered mail, as it is the same address which appears in respondent's FAN and FDL [sic], while he was claiming that he changed his business address. Hence, petitioner is estopped from denying actual receipt of the said assessment notices.

With regards [sic] to petitioner [sic] reliance in the fact that BIR has impliedly admitted that it sent the FAN and FLD through registered mail by applying the provisions of Section 10, Rule 13, Rules of Court on ordinary mail. However, it has already been explained that it was made out of inadvertence when the BIR misquoted the second sentence.

Even without the certification from the Post Master, a thorough evaluation of the documents will easily show that the FAN as well as the FLD, all dated March 25, 2009, were all sent through registered mail on April 2, 2009, as evidenced by the Master List of Registered Mail prepared by the Mailing Section of BIR under Registry Number 7549, duly signed by the one in-charge of registered mail in the Bureau of Post at that time. Contrary to the contention of petitioner that the same is self-serving, the Rules of Court provides that:

> Sec 44. *Entries in official records.* – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are ***prima facie* evidence of the facts therein stated.**

Therefore, the same is not self-serving as in fact it is sanctioned by the Rules of Court. In other words, the Master List of Registered Mail prepared by the Mailing Section of BIR under Registry Number 7549, duly signed by the one in-charge of registered mail in the Bureau of Post is one made by a public official or employee in the performance of his/her duty and should be considered as sufficient proof that it was sent.

And *lastly*, petitioner was properly issued a notice of delinquency contrary to petitioner's allegation that there was no notice of delinquency ever served to him, who was only caught by surprise when a lady BIR seizure agent personally visited his office sometime on February 2010 and informed him that she is there to collect the delinquent account by affecting [sic] seizure (garnishment).

Respondent does not agree.

BIR record reveals that petitioner received from respondent a preliminary, second and final collection letter requesting for him to settled [sic] his delinquent account. The said collection letters could be read and seen on pages 106 to 108 of the BIR records. Thus, respondent's Warrant of Distraint and/or Levy issued and received by petitioner has a legal basis.

12. Petitioner's FAN issued by Director Esmeralda M. Tabule is final, executory and demandable, and thus, this

> Honorable Court has no jurisdiction to entertain the instant case.
>
> Respondent submits [sic] petitioner failed to file a protest against respondent's FAN within the prescribed period as provided for under Section 228 of the NIRC of 1997, as amended, which states that *'Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessments in such form and manner as may be prescribed by implementing rules and regulations. ....; otherwise the assessment shall become final'.*
>
> In the instant case, petitioner did not comply with the period as provided in the above stated provision. Petitioner should have filed his protest on respondent's FAN within 30 days upon actual receipt after April 2, 2009 or from April 7, 2009 which ever date is earlier. Accordingly, petitioner could have, at the very latest, until May 7, 2009 within which to file protest. However, the petitioner protested only on February 18, 2010 (page 111 of the BIR records), or more than nine months from receipt of the FAN. The protest was filed beyond the 30-day period prescribed under Section 228 of the Tax Code, as amended."

On June 13, 2011, this Court issued a Notice of Pre-Trial Conference[35] notifying the parties that the case is set for pre-trial conference on July 21, 2011 and directing the parties and their respective counsels to be present at the pre-trial and to file with this Court their Pre-Trial Briefs at least three (3) days before the date of pre-trial.

On June 30, 2011, respondents filed their Pre-Trial Brief[36]; while this Court received petitioner's Pre-Trial Brief[37] on July 20, 2011.

On July 7, 2011, petitioner posted his Reply with Manifestation[38], praying that the parties be required to submit their respective memorandum, after which the case may be submitted for resolution.

[35] Docket, p. 000120.
[36] Docket, pp. 000121 to 000127.
[37] Docket, pp. 000129 to 000135.
[38] Docket, pp. 000144 to 000148.

During the pre-trial proceedings held on July 21, 2011, this Court gave the parties a period of thirty (30) days from July 21, 2011 within which to submit their Joint Stipulation of Facts and Issues.[39]

On September 12, 2011, the parties submitted their Joint Stipulation of Facts.[40] This Court issued the Resolution[41] dated September 14, 2011 approving the Joint Stipulation of Facts filed by both parties and holding that the pre-trial is deemed terminated.

During the scheduled initial presentation of evidence for petitioner, petitioner manifested that he would not present any evidence on the ground that since he has denied the receipt of the FAN, the burden rests upon respondents to prove that the FAN was actually served upon petitioner. On the other hand, respondents objected considering that petitioner denied receiving the assessment notice. Thus, this Court set the initial presentation of evidence for respondents on December 14, 2011.[42]

Respondents presented testimonial and documentary evidence to prove, among others, that the FAN and the FLD were served via registered mail and received by petitioner on April 14, 2009.

In the Resolution[43] dated December 5, 2012, the case was submitted for decision, taking into consideration the "Memorandum (for the Petitioner)"[44] filed on November 15, 2012 and the "Memorandum (for Respondent)"[45] filed on December 3, 2012.

The parties submitted the following issues[46] for this Court's resolution:

> "1. Whether or not the Honorable Court has jurisdiction over the Petition?
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> 2. Considering that it is the Commissioner of Internal Revenue who is authorized by law (Sec. 6 of R.A. 8424) to make assessments, and the Regional Directors merely exercise a delegated authority to make assessment from the

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[39] Minutes of the July 21, 2011 Pre-Trial Proceedings, docket, p. 000140.
[40] Docket, pp. 000150 to 000156.
[41] Docket, p. 000157.
[42] Minutes of the October 24, 2011 Hearing, docket, p. 000161; Transcript of Stenographic Notes (TSN), October 24, 2011 Hearing, pp. 4 to 11.
[43] Docket, p. 000361.
[44] Docket, pp. 000304 to 000322.
[45] Docket, pp. 000323 to 000359.
[46] Joinder of Issues, Joint Stipulation of Facts, docket, pp. 000153 to 000156.

Commissioner of Internal Revenue allowed under Section 7 in relation to Section 10 (h) of R.A. 8424, **was the authority to make assessment effectively withdrawn from Gandarosa by virtue of RTAO Nos. 212-2008 and 221-2008 issued by the CIR?**

3. Considering the Gandarosa was able to obtain TRO and preliminary injunction from Tubod, Lanao del Norte, 12th Judicial Region, and that such TRO cannot be implemented within 10th Judicial Region, pursuant to second paragraph of Section 21 of B.P. Blg. 129, **did Gandarosa act with authority or 'color of authority' when he issued the questioned PAN?**

4. Considering that according to decision of Court of Appeals (Mindanao Station, Special 23rd Division), RTC Branch 7 of Tubod, Lanao del Norte has no jurisdiction over the case and that it follows, that all the assailed orders (TRO and injunctive writ) issued by said RTC are deemed invalid and void *ab initio*, **does it also follow that the PAN, issued by ousted GANDAROSA after RTAO 212-2008 and RTAO 221-2008, was invalid, null and void *ab initio*?**

5. Based on the BIR records of the tax case, was the service of Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) upon the Taxpayer (herein Petitioner) duly proved by mere certification issued by BIR Mailing Section that it mailed FLD and FAN, invoking official entries, **so as to reckon the 30-day period, within which the Petitioner may file his protest?**

6. Under the circumstances, **was there proper observance of due process so as to sustain the validity of the deficiency assessment?**"

This Court shall initially discuss the first issue which pertains to its jurisdiction to take cognizance of the case. More specifically, this Court shall determine whether it has jurisdiction to entertain the Petition for Review which was filed within thirty (30) days from receipt by petitioner of the ruling issued by Regional Director Tabule.

Well-settled is the rule that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law and not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[47]

Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, creating the Court of Tax Appeals (CTA), did not grant this Court blanket authority to decide any and all tax disputes. In defining the CTA's jurisdiction, RA No. 1125, as amended, necessarily limited the CTA's authority to those matters enumerated therein.[48] Thus, with regard to internal revenue tax assessments, the jurisdiction of the CTA is limited to those enumerated under Section 7(a)(1) and (2) of RA No. 1125, as amended, to wit:

> "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;
>
> (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;"

To determine whether this Court has jurisdiction over the present case, it is necessary for this Court to settle the issue pertaining to whether or not petitioner received the FLD and the FAN, all dated March 25, 2009. If petitioner received said FLD and FAN but he failed to file a valid protest within the period provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations No. 12-99, the FLD and the FAN issued against petitioner had become final,

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[47] *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G. R. No. L-23988, January 2, 1968.

[48] *Genaro Ursal, as City Assessor of Cebu vs. Court of Tax Appeals and Consuelo Noel; Genaro Ursal, as City Assessor of Cebu vs. Court of Tax Appeals and Jesusa Samson*, G.R. Nos. L-10123 and L-10355, April 26, 1957.

executory and unappealable. In such a situation, this Court does not have jurisdiction to entertain the appeal and to determine the validity and correctness of an assessment that had already attained finality.

Records show that petitioner denies receiving the FLD and the FAN. On the other hand, respondents claim that the FLD and the FAN were validly served through registered mail and duly received by petitioner.

Service of the assessment notice to the taxpayer may be by registered mail or by personal delivery. It is settled in our jurisprudence that if the assessment is served by registered mail, and the original was not returned to respondent BIR, the presumption is that the taxpayer received the said assessment in the regular course of mail[49] pursuant to Section 3(v) of Rule 131 of the Rules of Court.[50]

The facts to be established in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail.[51]

However, in the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[52], the Supreme Court already ruled that this presumption is merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Pertinent portions of the Supreme Court's decision are quoted hereunder:

> "(A)n assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.

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49 *CAL Holdings Philippines. Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6882, May 26. 2006.

50 Sec. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx
(v) That a letter duly directed and mailed was received in the regular course of the mail;

51 *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965; *Protector's Services, Inc. vs. Court of Appeals*, *et al.*, G.R. No. 118176, April 12, 2000.

52 G.R. No. 157064, August 7, 2006.

xxx xxx xxx

> (W)hen a mailed matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise the presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, there is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."

In this case, considering that petitioner denies receipt of the mail, it is incumbent upon respondents to prove that it was indeed received by petitioner. To prove that petitioner received the registered mail containing the FLD and the FAN, respondents presented the following documentary evidence:

1. Exhibit "1" – Registry Return Receipt;[53]
2. Exhibit "2" – Certification from the Office of the Postmaster dated June 17, 2011;[54]
3. Exhibit "4" – Masterlist of Registered Mail;[55]
4. Exhibit "5" – Record of Dispatch and Delivery of Registered Mail by Letter Carriers;[56]
5. Exhibit "6" – Registry Return Slip;[57] and
6. Exhibit "20" – Record Book.[58]

Respondents also presented Mr. Rizalito A. Labiano and Mr. Antonio M. Soriano III, BIR Administrative Assistant I, as witnesses, to prove that the FLD and the FAN were indeed served by registered mail and received by petitioner.

After a thorough perusal of the documentary and testimonial evidence presented by respondents, this Court finds that respondents have sufficiently established that the FLD and the FAN, all dated March 25, 2009, were sent by registered mail and received by petitioner.

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[53] BIR Records, p. 92.
[54] Docket, p. 000274.
[55] Docket, p. 000275.
[56] Docket, p. 000276.
[57] BIR Records, p. 90.
[58] Docket, p. 000273.

The Registry Return Receipt clearly refers to Registered Letter No. 7549, which is addressed to Mr. Adelardo K. Pagente, and which shows that the mail was delivered to petitioner on April 14, 2009. It also shows the name "MAI MAI", with signature, on the space provided above the "signature or name of addressee". The testimony of Rizalito A. Labiano, City Postmaster of Cagayan de Oro City[59], his Certification dated June 17, 2011, and the Record of Dispatch and Delivery of Registered Mail by Letter Carriers, all prove that Registered Letter No. 7549 posted by the BIR RR No. 16, addressed to Mr. Adelardo K. Pagente, Zone 6, Bulua, Cagayan de Oro City, was delivered by LC Gelito Escuadro, and was duly received and signed by Ms. Mai Mai De Dios on April 14, 2009.

On the other hand, Mr. Antonio M. Soriano III testified that he delivered the FLD and the FAN to the Administrative Section of Revenue Region No. 16 for mailing on April 1, 2009, as evidenced by the entries in the Record Book that he maintains for purposes of recording mail matters he delivers to the Administrative Section for mailing. He also testified that he was certain that the FLD and the FAN issued against petitioner were recorded as Registered Mail No. 7549 as per the Registry Return Slip (which also shows the name and address of petitioner) given by the Post Office of Cagayan de Oro City since the FLD and the FAN dated March 25, 2009 were the only ones mailed to petitioner on April 2, 2009.[60]

This Court holds that the testimonial and documentary evidence presented by respondents are sufficient to show that petitioner indeed received the FLD and the FAN. On the other hand, petitioner did not present any evidence to refute the evidence presented by respondents.

As provided in Section 228[61] of the NIRC of 1997, as amended, as implemented by Section 3.1.5[62] of Revenue Regulations No. 12-99, the

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[59] TSN, February 1, 2012 Hearing.

[60] Exhibit "21", docket, pp. 000228 to 000232.

[61] 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:
(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(d) When the excise tax due on excisable articles has not been paid; or
(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

failure of a taxpayer to file a timely protest against the assessment renders the assessment final, executory, and unappealable. Once the assessment attains finality, the taxpayer is already precluded from disputing the correctness of the assessment. Hence, petitioner can no longer seek judicial relief from this Court because the assessment is already final, executory, and unappealable. Consequently, it is now beyond judicial review.[63]

In view of the foregoing, since petitioner failed to file an administrative protest within the prescribed thirty (30)-day period, the FLD and the FAN had become final, executory, and demandable. As a result, this Court has no jurisdiction to take cognizance of the case since the FLD and the FAN are no longer appealable to this Court under Section 7(a)(1) and (2) of RA No. 1125, as amended.

Citing the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[64] (*Metro Star Superama case*), petitioner asserts that the

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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 (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.

[62] 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.
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 the 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.
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. (Revenue Regulations No. 12-99)

[63] *Maersk Logistics Filipinas, Inc. vs. The Commissioner of Internal Revenue, et al.*, CTA Case No. 7099, May 6, 2009.

[64] G.R. No. 185371, December 8, 2010.

FLD and the FAN could not have become final and executory since there was no valid PAN issued by respondents. This Court finds the doctrine laid down in the *Metro Star Superama case* inapplicable.

In the *Metro Star Superama case*, the BIR failed to prove that the taxpayer actually received the PAN. Hence, in the absence of proof of actual receipt by the taxpayer of the PAN, the assessment was invalidated because the taxpayer was not accorded due process. Metro Star Superama, Inc. was deprived of the opportunity to be heard, which is the very essence of due process. It was not able to contest the PAN as it was not served upon it. Thus, the Supreme Court had to emphasize that the service of a PAN to a taxpayer to inform him of the assessment against him is an important part of the due process requirement relative to the issuance of a deficiency tax assessment. Pertinent portion of the High Court's decision reads:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. **The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN**. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, **for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void**." *(Emphasis supplied)*

In this case, it is undisputed that a PAN dated January 7, 2009 was issued by Mr. Gandarosa. Petitioner does not claim that the PAN was not served upon him or that he did not receive the PAN. Petitioner insists that the PAN is void for being issued by Mr. Gandarosa without any authority; while respondents argue that the PAN is valid as it was issued by Mr. Gandarosa at that time that the TRO and the writ of preliminary injunction issued by Judge Flores were still subsisting.

The issue on the validity of the PAN is a matter of defense which petitioner could have properly raised if he only chose to respond to the PAN within the 15-day period provided therein. As records clearly reveal, while petitioner was afforded the opportunity to be heard or to contest the PAN, petitioner never responded to the PAN or questioned its validity. More importantly, petitioner failed to file a valid protest against the FLD and the

FAN within the prescribed period. In fact, in petitioner's letter to respondent Regional Director Tabule dated February 18, 2010, petitioner never bothered to question the validity of the assessment on account of the PAN being issued by Mr. Gandarosa without authority. Notably, the issue on the validity of the PAN and consequently, the FLD and the FAN, was only raised for the first time in the request for ruling that petitioner filed on November 8, 2010.

Undoubtedly, petitioner was not denied due process or the opportunity to be heard. Petitioner was given adequate opportunity to present his case but unfortunately, he failed to take advantage of the same.

There being no valid protest on the assessments issued by respondent Regional Director Tabule, the same have attained finality by mere lapse of time and is no longer open to dispute and discussion.[65] **Any objection against the PAN, the FLD, and the FAN should have been pursued by petitioner in accordance with Section 228 of the NIRC of 1997, as amended and Section 3.1.5 of Revenue Regulations No. 12-99.**

Finally, this Court is aware that in his Petition for Review, petitioner appeals the ruling issued by respondent Regional Director Tabule in response to the request for ruling filed by petitioner and addressed to respondent CIR. Strangely, said request for ruling was filed by petitioner more than five (5) months from the time Revenue District Officer Palala requested petitioner, through a letter dated May 28, 2010, to settle his tax liabilities within ten (10) days from notice to avoid the execution of the civil remedies provided under Section 205 of the NIRC of 1997, as amended, and more than four (4) months from June 22, 2010 during which petitioner was given a copy of the Memorandum dated March 26, 2010 issued by the Legal Division of Revenue Region No. 16 and was informed that the assessment against him was already collectible.

A close perusal of the issues raised by petitioner in said request for ruling reveals that said issues specifically relate to the validity of the PAN and the FAN issued against petitioner covering calendar year 2006. However, as stated above, Section 228 of the NIRC and Revenue Regulations No. 12-99 have laid down the proper remedies to question the validity of the PAN and the FAN. Obviously, the filing of a request for ruling is certainly not the remedy provided by said law and regulations to the taxpayer for purposes of questioning the validity of the PAN and the FAN. The filing of the request for ruling by petitioner was just a mere afterthought to salvage his case.

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[65] *Central Metro Trade Distributors, Inc. vs. Hon. Commissioner Guillermo T. Parayno, Jr., Hon. Estrella Martinez*, CTA En Banc Case No. 179, January 3, 2007 (CTA Case No. 7171).

Since the FLD and the FAN have already become final, executory, and unappealable on account of petitioner's failure to file a valid protest within the prescribed period, to grant petitioner's prayer in its Petition for Review to reverse the ruling of the Regional Director of Revenue Region No. 16, to cancel the tax assessment issued against him, and to lift his tax delinquency, is to allow petitioner to indirectly file an appeal against the FLD and the FAN which have already become final and executory. It has been ruled that what one cannot do directly, he cannot do indirectly.[66]

In view of the foregoing, this Court finds the remaining stipulated issues no longer necessary for the disposition of this case.

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division

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[66] *Alvarez vs. PICOP Resources, Inc.*, G.R. No. 162243, December 3, 2009; *PICOP Resources, Inc. vs. Alvarez*, G.R. No. 164516, December 3, 2009; and *Reyes vs. Paper Industries Corp. of the Philippines (PICOP),* G.R. No. 171875, December 3, 2009.