REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ALPHALAND SOUTHGATE TOWER, INC., *Petitioner,*	**CTA EB No. 2251** (CTA Case No. 9610)
	Present:
-versus-	**DEL ROSARIO, *P.J.*,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** and **FERRER-FLORES, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 03 2022 4:30pm

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RESOLUTION

REYES-FAJARDO, *J.*:

For resolution is petitioner's Motion for Reconsideration (to the *Decision* dated 20 April 2022)[1] filed on May 6, 2021, *sans* respondent's Comment.

Petitioner seeks reconsideration of the Decision of the Court *En Banc* promulgated on April 20, 2022[2] ("Assailed Decision"), affirming

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1 *Rollo,* pp. 117-127.
2 *Id.*, pp. 85-110.

the judgment of the Second Division ("Court in Division") of this Court, the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is **DENIED**. Accordingly, the Decision dated December 13, 2019 and the Resolution dated February 14, 2020 in CTA Case No. 9610 are **AFFIRMED**.
>
> **SO ORDERED.**

In assailing the Decision of the Court *En Banc*, petitioner contends that the May 5, 2016 letter of ACIR Valeroso is not the decision that is appealable to the CTA. Instead, it is the decision of respondent denying petitioner's Motion for Reconsideration of ACIR Valeroso's Final Decision on Disputed Assessment dated June 29,2016, which is the "final decision" appealable to the CTA.

On the other hand, respondent failed[3] to file a comment to petitioner's *Motion for Reconsideration* despite notice.

The instant Motion is denied.

Section 3.1.4 of RR No. 18-2013 provides that if the taxpayer receives a decision from respondent's authorized representative, it may either: *first,* appeal to the Court in Division within thirty (30) days from receipt thereof; or *second,* elevate to respondent through a request for reconsideration within the same period of time, to wit:

> ...
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> 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. ...[4]

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[3] Records verification report dated August 3, 2022.
[4] Boldfacing supplied.

To reiterate, petitioner had thirty (30) days from receipt of ACIR Valeroso's Letter dated May 5, 2016 on May 16, 2016, or until June 15, 2016 to either: *first*, appeal to the Court in Division; or *second*, file a request for reconsideration before respondent.

As already found in the assailed Decision, none of these remedies were properly availed of by petitioner. The relevant dates are as follows:

1. On **October 9, 2015**, petitioner received the FAN dated September 18, 2015 and FLD dated October 8, 2015 issued by ACIR Valeroso.[5]
2. In the Letter dated **November 3, 2015** filed through registered mail to ACIR Valeroso, petitioner protested the FAN/FLD by way of reinvestigation.[6]
3. **On May 16, 2016, petitioner received a Letter dated May 5, 2016 issued by ACIR Valeroso, stating that petitioner was barred from disputing the correctness of the issued assessment and was required to pay the deficiency VAT immediately; otherwise, the BIR would be compelled to initiate remedies provided by law for the collection thereof.**[7]
4. **In the Letter dated May 17, 2016, filed with the Office of ACIR Valeroso, petitioner sought reconsideration of the former's denial of its request for reinvestigation of its VAT liability.**[8]
5. On **June 5, 2017**, petitioner filed a Petition for Review[9] before the Court in Division.

The period to appeal to respondent should have started from receipt of ACIR Valeroso's Letter dated May 5, 2016 on May 16, 2016. Thus, when petitioner filed its Petition for Review on June 5, 2017, the same was filed out of time.

As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory

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5 Exhibit "P-4," docket (CTA Case No. 9610), Volume II, pp. 739-743, Boldfacing supplied.
6 BIR Records, pp. 197-198.
7 Exhibit "P-10," docket (CTA Case No. 9610), Volume II, pp. 766-767, Boldfacing supplied.
8 Exhibit "P-11," *id.* at pp. 768-781.
9 Docket (CTA Case No. 9610), Volume I, pp. 10-18.

and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.[10]

In sum, petitioner failed to raise any compelling reason to warrant the reversal of this Court's findings in the Assailed Decision affirming the Court in Division's Decision dated December 13, 2019, and its Resolution dated February 14, 2020.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

(With due respect, I reiterate my concurrence to the Dissenting Opinion of Justice Maria Rowena Modesto-San Pedro on the April 20, 2022 Decision of the Court En Banc)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(With due respect, please see Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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10 *Rizal Commercial Banking Corporation, v. Commissioner of Internal Revenue,* G.R. No. 168498, June 16, 2006.

CATHERINE T. MANAHAN
Associate Justice

(I reiterate my Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I reiterate my concurrence to the Dissenting Opinion of Justice Maria Rowena Modesto-San Pedro in the April 20, 2022 Decision)
LANEE S. CUI-DAVID
Associate Justice

ON OFFICIAL BUSINESS
CORAZON G. FERRER-FLORES
Associate Justice

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EN BANC

ALPHALAND SOUTHGATE TOWER, INC., **Petitioner,**	**CTA EB NO. 2251** **(CTA CASE NO. 9610)**
-versus-	**Present:** **Del Rosario,** *P.J.*, **Uy,** **Ringpis-Liban,** **Manahan,** **Bacorro-Villena,** **Modesto-San Pedro,** **Reyes-Fajardo,** **Cui-David,** *and* **Ferrer-Flores,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 0 3 2022 4:20 pm

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague Associate Justice Marian Ivy F. Reyes-Fajardo, after due reflection and further study of the recent Supreme Court decisions, I hereby change my position in the Decision dated April 20, 2022 and vote to grant the Petition for Review.

The facts as found by the Court reveals that:

1) On August 15, 2014, petitioner received a Letter of Authority (LOA) dated August 12, 2014;

2) On August 14, 2015, petitioner received a Preliminary Assessment Notice (PAN) issued by ACIR Valeroso, finding petitioner liable for deficiency VAT in the total amount of Php50,774,168.22 and imposing a compromise penalty of Php50,000.00;

3) On August 28, 2015, petitioner filed its protest to the PAN;

4) On October 9, 2015, petitioner received the Audit Result/Final Assessment Notice (FAN) dated September 18, 2015 and Formal Letter of Demand (FLD) dated October 8, 2015 issued by ACIR Valeroso, assessing it for deficiency VAT with adjusted interest in the total amount of Php52,165,553.78, and the imposition of compromise penalty of Php50,000.00;

5) On November 3, 2015, petitioner protested the FAN/FLD by way of a reinvestigation;

6) On December 23, 2015, petitioner received a Final Notice Before Seizure (FNBS) issued by ACIR Valeroso, demanding payment of the deficiency taxes;

7) On January 5, 2016, ACIR Valeroso issued a Warrant of Distraint and Levy (WDL);

8) On January 7, 2016, petitioner filed a Request Letter for Reinvestigation and Lifting of the WDL;

9) On May 16, 2016, petitioner received a Letter dated May 5, 2015 issued by ACIR Valeroso, stating that the assessment had become final due to petitioner's failure to submit relevant supporting documents with the sixty (60)-day period;

10) On May 17, 2016, petitioner filed with the Office of ACIR Valeroso seeking reconsideration of its request for reinvestigation of its VAT liability;

11) On June 29, 2016, petitioner received the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies issued by ACIR Valeroso, reducing the deficiency VAT liability from Php52,165,553.78 to Php20,386,979.98, while the compromise penalty remained at Php50,000.00;

12) On July 28, 2016, petitioner filed a Motion for Reconsideration on ACIR Valeroso's FDDA before respondent CIR;

13) On May 5, 2017, respondent issued his Letter-Decision denying petitioner's Motion for Reconsideration;

14) On June 5, 2017, petitioner filed a Petition for Review before the Court in Division.

In the recent case of "***Light Rail Transit Authority vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue***"[1] the Supreme Court ruled as follows:

> "Section 7(a) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides for the exclusive appellate jurisdiction of the Court of Tax Appeals, thus:
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> 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 of other laws administered by the Bureau of Internal Revenue;
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> xxx xxx xxx
>
> "Decisions of the Commissioner in cases involving disputed assessments" mean decisions of the Commissioner on the protest to the assessment, not the assessment itself. The protest may either be a request for reconsideration or a request for reinvestigation, and the decision on the protest, which may also be rendered by a duly authorized representative of the Commissioner – must be final, i.e., not merely tentative in character.
>
> xxx xxx xxx
>
> **Contrary to the ruling of the Court of Tax Appeals *En Banc*, the Final Decision on Disputed Assessment cannot be considered as the decision appealable to the Court of Tax Appeals under Section 7(a)(1) of Republic Act No. 1125, as amended. This interpretation will render nugatory the remedy of appeal to the Office of the Commissioner of Internal Revenue of the denial of protest issued by his or her duly authorized representative, a remedy which was properly and timely availed of by petitioner.** *xxx*

[1] G.R. No. 231238, June 20, 2022. Citations omitted.

xxx xxx xxx

> Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that if the protest is elevated to the respondent Commissioner of Internal Revenue, "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." The Final Decision on Disputed Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.
>
> 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 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."

Based on the above-cited decision, it is the CIR's Decision that is appealable to the Court of Tax Appeals. Applying the said Decision in this case, the Letter-Decision received by petitioner on May 5, 2017 is the Final Decision that is appealable to the Court of Tax Appeals. Accordingly, the Petition for Review filed before the Court in Division on June 5, 2017 was timely filed.

Thus, this Court should assume jurisdiction over the instant Petition.

I therefore vote to **ASSUME JURISDICTION** over the Petition for Review and **REVERSE** or **SET ASIDE** the assailed Decision and Resolution of the CTA- Second Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice