**REPUBLIC OF THE PHILIPPINES**
COURT OF TAX APPEALS
**QUEZON CITY**

***En Banc***

**ADELARDO K. PAGENTE,**

*Petitioner,*

-versus-

**HON. ESMERALDA M. TABULE, HON. NELSON ASPE and HON. KIM JACINTO HENARES,**

*Respondents.*

**CTA EB No. 1030**
(CTA Case No. 8280)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 03 2014 9:00 a.m.

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# DECISION

**RINGPIS-LIBAN, J.:**

Before the Court *En Banc* is a Petition for Review filed on July 4, 2013 where petitioner asks the Court to reverse and set aside the Decision of this Court's Second Division dated February 5, 2013 dismissing for lack of jurisdiction the earlier Petition for Review filed on April 19, 2011 and the Resolution dated June 3, 2013 of the Court's Special Second Division denying the petitioner's Motion for Reconsideration for lack of merit.

The ruling in the assailed Decision of Second Division states as follows:

> "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 FAN which have

already become final and executory. It has been ruled that what one cannot do directly, he cannot do indirectly.

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**."

## THE FACTS[1]

The petitioner is a taxpayer and sole proprietor of Forever Books Learning Enterprises in Cagayan de Oro City.

On March 24, 2008, Regional Director Mustapha Gandarosa (Dir. Gandarosa) of Revenue Region No. 16, Cagayan de Oro City, issued Letter of Authority (LOA) No. 00057472 authorizing Revenue Officer Victoria M. Maandig to examine the petitioner's book of accounts and accounting records for all internal revenue taxes for the year 2006.

On July 22, 2008, a Notice of Informal Conference was issued against petitioner, informing him of his tax liabilities for calendar year 2006 in the amount of ₱2,312,370.50, inclusive of interests and penalties. Petitioner was given fifteen (15) days from notice within which to present his side, otherwise he would be deemed in default and a formal letter of demand and assessment notice would be issued against him.

On August 27, 2008, an amended Notice to Taxpayer was issued, informing the petitioner that after re-assessment, his deficiency income tax and VAT was determined to total ₱1,906,943.00, inclusive of interest and compromise penalties. Again, he was given fifteen (15) days from notice within which to present his side in writing.

On October 20, 2008, the Commissioner of Internal Revenue (CIR) issued Revenue Travel Assignment Order (RTAO) No. 212-2008, relieving Dir. Gandarosa as Regional Director of Revenue Region No. 16. Dir. Gandarosa, however, through a Petition for Certiorari and/or Prohibition[2], obtained a Temporary Restraining Order (TRO) on November 3, 2008 from Judge Alan L. Flores of Branch 7 of the Regional Trial Court (RTC) of Tubod, Lanao del Norte. This TRO was converted to a Preliminary Injunction on November 21, 2008.

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[1] *Rollo,* pp. 6-19.
[2] Special Civil Case No. 010-07-2008.

On November 28, 2008, the CIR issued RTAO No. 221-2008, reiterating RTAO No. 212-2008. On December 2, 2008, Dir. Gandarosa filed an action[3] before Judge Flores of RTC Branch 7 to cite the CIR and the Secretary of Finance in indirect contempt.

On December 22, 2008, Judge Flores issued an Omnibus and Interim Order enjoining the Finance Secretary, the CIR, and their subordinate officials and agents from issuing another RTAO that would tend to disturb the status quo, pending final determination of the Petition for Certiorari filed by Dir. Gandarosa. Judge Flores also declared void the Memoranda issued by Atty. Alberto S. Olaiman as Officer-in-Charge Regional Director of Revenue Region No. 16, for having been issued without authority.

The respondents in Dir. Gandarosa's Petition for Certiorari thereafter filed with the Mindanao Station of the Court of Appeals (CA) their own Petition for Certiorari, docketed as CA G.R. SP No. 02753-MIN.

On January 7, 2009, while the respective Petitions for Certiorari of the parties were pending, Dir. Gandarosa issued a Preliminary Assessment Notice (PAN) assessing deficiency income tax and VAT for calendar year 2006 in the amount of ₱2,047,186.90 against the petitioner.

On February 11, 2009, the CA granted a 60-day TRO enjoining Judge Flores from implementing his Resolution/Orders dated November 3, 21, and 25, 2008, and from further proceeding with Special Civil Cases Nos. 010-07-2008 and 011-07-2008. This paved the way for respondent Esmeralda M. Tabule to become Regional Director of Revenue Region No. 16, replacing Dir. Gandarosa.

On March 25, 2009, Regional Director Esmeralda M. Tabule (Dir. Tabule) upheld the PAN issued by Dir. Gandarosa and issued a Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) against the petitioner, for deficiency income tax and VAT for 2006 in the amount of ₱2,119,691.60, inclusive of interest and compromise penalty.

On March 27, 2009, the CA in CA G.R. SP No. 02753-MIN granted the issuance of a Writ of Preliminary Injunction in favor of the CIR, pending hearing of the Petition on the merits.

On August 3, 2009, the CA promulgated its decision granting the Petition for Certiorari in CA G.R. SP No. 02753-MIN. The Orders issued by Judge Flores were annulled and he was ordered to dismiss Special Civil Cases Nos. 010-07-2008 and 011-07-2008.

[3] Special Civil Case No. 011-07-2008.

On February 18, 2010, in a letter to Dir. Tabule, petitioner alleged that he was informed by a collection agent that he has a tax deficiency which had become due and demandable. He wrote that he did not receive any FLD, FAN or Notice of Delinquency. He requested that the tax assessment against him not be posted as delinquent, inasmuch as the 30-day period for the filing of a protest had not commenced to run.

On March 26, 2010, Habari L. Balt, officer-in-charge of the Legal Division of Revenue Region No. 16, issued a Memorandum finding that the FLD and FAN, both dated March 25, 2009, were posted and delivered by mail to the taxpayer at his given address on April 2, 2009. Mr. Balt opined that the taxpayer had until May 12, 2009 within which to file his protest; thus, the protest letter dated February 18, 2010 of the petitioner was filed out of time, beyond the period prescribed under Section 228 of the Tax Code, and the subject assessment had become final, executory and unappealable. This Memorandum was noted by the Regional Director.

By letter dated May 28, 2010, Revenue District Officer Ester S. Palala informed the petitioner of the legal opinion rendered by Mr. Balt in his Memorandum, a copy of which was attached to the letter. Ms. Palala requested the petitioner to settle his tax liabilities within ten (10) days from receipt of the letter, with the following warning: "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."

On June 22, 2010, the petitioner, during a personal follow-up, was again given a copy of Mr. Balt's Memorandum dated March 26, 2010.

On November 8, 2010, the petitioner addressed a nine-page letter to the CIR, captioned "Request for Ruling." The issues on which he sought rulings were enumerated as follows:

1) May a Preliminary Assessment Notice be validly issued by the Regional Director after he has been transferred pursuant to Revenue Travel Assignment Order duly issued?

2) May a Formal Letter of Demand and Final Assessment Notice be sent through ORDINARY MAIL?

3) May an assessment ripen into finality (to become executory and demandable) despite failure of service thereof upon the taxpayer?

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 Deputy Commissioner-Operations Group referred the petitioner's "Request for Ruling" to the regional director of Revenue Region No. 16.

In a letter dated March 10, 2011 addressed to the petitioner, Dir. 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 from the sala of Judge Allan Flores, Presiding Judge of Regional Trial Court, 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*'. 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, 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 through 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 of 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.
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> 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."

Petitioner received Dir. Tabule's letter-ruling dated March 10, 2011 on March 31, 2011.

On April 11, 2011, the petitioner filed a Petition for Review before this Court, praying that the ruling made by respondent Tabule be reversed, the tax assessment be cancelled, and the tax delinquency be lifted. The petition was raffled to the Second Division, which rendered Decision on February 5, 2013 dismissing the Petition for lack of jurisdiction. The petitioner's Motion for Reconsideration was subsequently denied for lack of merit by the Court's Special Second Division, through its Resolution dated June 3, 2013. Hence, the instant Petition for Review.

The respondents filed their Comment on the instant Petition on September 30, 2013. On November 6, 2013, the Court *En Banc* promulgated a Resolution deeming the case submitted for decision.

## **THE ISSUES**

The issues raised by petitioner are as follows:

1. Whether or not the Court of Tax Appeals has jurisdiction over the case?

2. Whether or not a BIR Regional Director who merely exercise [sic] delegated authority to make assessment from the Commissioner of Internal Revenue as allowed under Section 7 in relation to Section 10 (h) of R.A. 8424, can still make an assessment after the delegation of authority is withdrawn by RTAO Nos. 212-2008 and 221-2008 issued by CIR?

3. Whether or not Respondents observed due process in the issuance of deficiency assessment?[4]

A perusal of the records of this case establishes that these same issues were among the six (6) issues passed upon by the Second Division of this Court in its Decision.[5] In his Motion for Reconsideration, petitioner repeated as grounds the issues of jurisdiction and the second issue above, with the second issue rephrased in a manner that impugns the validity of the PAN issued by an allegedly unauthorized person. The Resolution of the Special Second Division of this Court, dated June 3, 2013, held this Motion for Reconsideration to be lacking in merit, and thus denied it.

Thus, the instant Petition for Review raises no new issues.

## RULING OF THE COURT EN BANC

The petitioner has not disputed the amount of deficiency taxes assessed against him, nor the receipt of the PAN. It is apparent that he did not file a protest compliant with Section 228 of the NIRC. The relevant portion of Section 228 states:

> "**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:
>
> x x x
>
> 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 thirty (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.
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> 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

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[4] *Rollo*, pp. 44-45.
[5] *Rollo*, pp. 5-28.

> 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 ours.)*

Petitioner argues, however, that the PAN, being issued by an unauthorized person, cannot be the basis of a valid FAN and FLD. Even if the FAN and FLD were valid, he alleges that he did not receive them, and thus the periods for the filing of a protest and subsequent appeal laid down by law could not have commenced to run. Accordingly, he could still appeal the assessment to this Court, which appeal is within its jurisdiction.

This line of argument collapsed when the Second Division ruled, based on the respondents' evidence, that the FAN and FLD were in fact served by registered mail to the petitioner's address of record, where they were received and signed for by one Mai Mai de Dios on April 14, 2009.[6] The petitioner failed to establish that Mai Mai de Dios was not authorized to receive mail matter for or in his behalf or that of his enterprise.

Under Section 228 of the NIRC, the petitioner had thirty (30) days from April 14, 2009, the date of receipt of the FAN and FLD, within which to file an administrative protest with the BIR. Within sixty (60) days from the filing of such protest, the taxpayer should have submitted all relevant documents in support of the protest, otherwise the assessment will have become final.

The petitioner failed to file and substantiate an administrative protest within the periods prescribed by the NIRC. It was not until February 18, 2010, or **nine (9) months after the lapse of the period for the filing of a protest**, that he wrote the BIR a letter feigning surprise at the information that he had been assessed tax deficiencies and that such assessment had become final, executory and collectible. Furthermore, in the succeeding sixty (60) days after the said letter, he failed to submit all relevant documents in support of his "protest", if the letter could be labelled as such.

Thus, by his inaction, the petitioner lost the remedies of administrative protest and judicial appeal concerning the assessment. To wriggle out of this predicament, he then wrote a nine-page letter to the CIR, dated November 8, 2010 and captioned "Request for Ruling," that seemed to raise questions of law. The respondents, however, held firm to their position that the FAN and FLD were duly served and had attained finality after the period for the filing of a protest lapsed without a protest compliant with Section 228 of the NIRC having been consummated.

Petitioner then resorted to this Court via Petition for Review. We find that the Court's Second Division is correct in finding that his remedies of protest and

[6] Decision, page 20.

appeal of the assessment had prescribed and that the assessment had thereby attained finality; that it had no jurisdiction over the petition, and that the Petition should be dismissed. The Special Second Division was also correct in upholding this dismissal when it denied the petitioner's Motion for Reconsideration for lack of merit.

As a logical consequence of those findings, we dismiss the instant Petition for Review, for lack of merit, for the reasons set forth below.

**Petition Not Within the CTA's Jurisdiction.**

The petitioner insists that the CTA has jurisdiction over the case.

Indeed, the failure to perfect an administrative protest is not necessarily fatal to a taxpayer's availment of judicial appeal to this Court. In *Allied Banking Corporation vs Commissioner of Internal Revenue*[7], the Supreme Court held that the CTA had jurisdiction over a Petition for Review assailing the CIR's formal letter of demand, even if the petitioner had failed to dispute and administratively protest the same beforehand; the Supreme Court found the FLD to be so worded as to be tantamount to a "final decision" of the CIR, rendering it appealable to the CTA. The Supreme Court said:

> "To be clear, we are not disregarding the rules of procedure under Section 228 of the NIRC, as implemented by Section 3 of BIR Revenue Regulations No. 12-99. It is the Formal Letter of Demand and Assessment Notice that must be administratively protested or disputed within 30 days, and not the PAN. Neither are we deviating from our pronouncement in *St. Stephen's Chinese Girl's School v. Collector of Internal Revenue* (104 Phil. 314, 317 [1958]), that the counting of the 30 days within which to institute an appeal in the CTA commences from the date of receipt of the decision of the CIR on the disputed assessment, not from the date the assessment was issued.
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> What we are saying in this particular case is that, the Formal Letter of Demand with Assessment Notices which was not administratively protested by the petitioner can be considered a final decision of the CIR appealable to the CTA because the words used, specifically the words "final decision" and "appeal", taken together led petitioner to believe that the Formal Letter of Demand with Assessment Notices was in fact the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA."[8]

In the instant case, however, there is nothing in the FLD that suggests it to be the "final decision" of the CIR. The text of the FLD reads as follows:

> "Please be informed that after investigation there has been found due from you deficiency income tax and value-added taxes for calendar year 2006 as shown hereunder.

[7] G.R. No. 175097, February 5, 2010.
[8] *Id.*

x x x

> The complete details covering the discrepancies established during the investigation of this case are shown in the accompanying schedules of this letter of demand.
>
> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice."

Clearly, the petitioner could have requested a reconsideration or reinvestigation and administratively protested the FLD; but he failed to do so within the 30-day period set by law. Consequently, he was unable to timely raise a dispute upon which the CIR could have rendered a final decision appealable to this Court, or over which inaction by the CIR could have been appealed to this Court. The petitioner's failure to comply with the 30-day statutory period barred the appeal and deprived the CTA of its jurisdiction to entertain and determine the correctness of the assessment.[9]

With the petitioner having lost not only the remedy of protest but also of appeal, the assessment attained finality and became executory. As the Supreme Court explained in ***Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, et al.***[10]:

> "[A] taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes." *(Citations omitted.)*

Following ***CIR vs. Gonzalez*** as cited above, the petitioner is now precluded from interposing the defense of legality or validity of the assessment.

Despite being barred by Section 228 of the NIRC, the petitioner wants to persuade this Court that it has jurisdiction over the original Petition for Review filed on April 19, 2011. The petitioner invokes Section 7(a)(1) of R.A. No. 9282[11], which reads as follows:

> "**Section 7.** *Jurisdiction.* – The CTA shall exercise:

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[9] See *Rizal Commercial Banking Corporation vs Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006.
[10] G.R. No. 177279, October 13, 2010.
[11] An Act Expanding the Jurisdiction of the Court of Tax Appeals, approved on March 30, 2004.

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 or other laws administered by the Bureau of Internal Revenue x x x"

The petitioner wants this Court to deem his petition as one that falls within the coverage of the phrase "or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue."

In ***Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.***[12], where the issue was whether or not the CIR's right to collect deficiency taxes assessed in 1989 had already prescribed, the Supreme Court had occasion to discuss the "other matters" clause of Section 7(1) of R.A. No. 1125.[13] The Supreme Court held that the term "other matters" "is limited only by the qualifying phrase that follows it and that "the second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).""[14]

The Supreme Court observed that the prescription of the BIR's right to collect taxes "is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made,"[15] and thus was covered by the "other matters" clause; thus, the CTA has jurisdiction over the issue of prescription of the period to collect the assessment, even if the assessment itself had already become final and executory.

The Supreme Court additionally expounded in ***CIR vs. Hambrecht & Quist Philippines, Inc.***:

> "[T]he phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
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> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does

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[12] G.R. No. 169225, November 17, 2010.
[13] An Act Creating the Court of Tax Appeals, approved on June 16, 1954.
[14] *Supra* at Note 11.
[15] *Id.*

> not take into account the CIR's restrictive interpretation as it clearly provides that **the mere existence of an adverse decision, ruling or inaction along with the *timely* filing of an appeal operates to validate the exercise of jurisdiction by the CTA**." *(Emphasis ours.)*

In ***Philippine Journalists, Inc. vs. Commissioner of Internal Revenue***,[16] the Supreme Court deemed the validity of a warrant of distraint and levy and of a waiver of the statute of limitations to fall within the "other matters" clause, and thus within the jurisdiction of the CTA.

In the factual antecedents of the petitioner's original petition for review filed on April 19, 2011, the petitioner did ask the CIR to make a ruling on the question: "May a warrant of distraint and levy be validly issued without prior notice of delinquency?" The question was raised in the petitioner's November 8, 2010 letter to the CIR, captioned "Request for Ruling." However, the petitioner no longer raised this as an issue in his Petition for Review filed on April 19, 2011.[17]

It strikes this Court that while the petitioner invokes the "other matters" clause, he does so in reference to decisions or rulings rendered by the BIR, which thus do not actually qualify as "other matters". The issues he raised before the BIR and this Court all go back to the finality of the assessment that he failed to dispute. Had he disputed the assessment in the manner prescribed by Section 228 of the NIRC, the decision or inaction thereon of the CIR would have been appealable to and thus within the jurisdiction of this Court.

When petitioner filed his Petition for Review before the Second Division, the reliefs he sought were the following: the reversal of the March 10, 2011 ruling of Dir. Tabule of Revenue Region-16; the cancellation of the tax assessment; and the lifting of the alleged tax deficiency. In his Motion for Reconsideration dated February 25, 2013, the petitioner prayed for the reversal and setting aside of the same ruling of Dir. Tabule; the declaration of the PAN as invalid and void *ab initio* for being issued without authority; and the declaration of the FLD and FAN as baseless because of an invalid PAN.

The ruling rendered by Dir. Tabule on March 10, 2011 was made in response to petitioner's November 8, 2010 "Request for Ruling" that questioned the assessment and its consequences. It is thus fairly obvious that the issues presented by the petitioner all arose from the deficiency tax assessment that he failed to properly protest on time, and thus do not fall within this Court's jurisdiction, even under the "other matters" clause. For an assailed assessment to come within this Court's jurisdiction, it must first have been disputed in accordance with Section 228 of the NIRC, and there must have been a decision or inaction on

[16] G.R. No. 162852, December 16, 2004.
[17] See page 9 of the said petition, under the heading "Summary Statement of the Issues."

the dispute by the CIR; otherwise, the assessment becomes final and executory, placing it beyond this Court's appellate jurisdiction.

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a Petition for Review may be taken to the Court of Tax Appeals.[18] The CTA can only validly acquire jurisdiction over a case after the CIR has rendered its decision or, should the CIR fail to act, after the lapse of the period of action provided in the Tax Code, in which case the inaction of the CIR is considered a denial.[19]

It is plain that Section 7 of R.A. No. 9282 pertains to the CTA's *appellate*, not original, jurisdiction, with the appeal seeking relief against *decisions* of the CIR in cases involving *disputed* assessments. The March 10, 2011 ruling of Dir. Tabule was on an assessment that was *not* disputed in time and in the prescribed manner; thus, the said ruling is not the decision made appealable to this Court by Section 7 of R.A. No. 9282.

On the other hand, an assessment that has become final and executory for failure to protest it within the statutory period, cannot possibly come within the CTA's appellate jurisdiction under the "other matters" clause. Under the Sec. 270 NIRC of 1977, an assessment that was not administratively protested on time "shall become final and unappealable." The equivalent Section 228 in the NIRC of 1997 simplified the wording to "shall become final." Nonetheless, jurisprudence has been consistent that **an undisputed assessment becomes unappealable after the lapse of the period to protest it**.

In ***Oceanic Wireless Network Inc. vs. CIR***[20], a request for reconsideration [of an assessment] must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested.

In ***CIR vs. Hambrecht & Quist Philippines, Inc.***[21], the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.

[18] *Oceanic Wireless Network Inc. vs Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.
[19] *CIR vs Visayas Geothermal Power Company, Inc.*, G.R. No. 181276, November 11, 2013.
[20] *Supra* at Note 17, *emphasis ours.*
[21] *Supra* at Note 11, *emphasis ours.*

In ***Commissioner of Internal Revenue vs. Bank of the Philippine Islands***[22]**,** the Supreme Court held that "[t]he inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments."[23]

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

The petitioner's assault may be likened to the tardily-filed "disguised protest" that the Supreme Court struck down in a case[25] where the petitioner heirs never questioned the assessments served upon them, allowing the same to lapse into finality, and prompting the BIR to collect the taxes by levying upon the properties left by the decedent. In the said case, the Supreme Court aptly held:

> "The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest. In the main, certiorari may not be used as a substitute for a lost appeal or remedy.[26] "

The Petition for Review filed on April 19, 2011 was thus correctly dismissed by the Second Division for lack of jurisdiction.

**PAN was Validly Issued.**

The second issue raised is whether or not the PAN issued by Dir. Gandarosa as Regional Director of Revenue Region No. 16 was valid, when the issuance was made at a time when the authority delegated to him was allegedly withdrawn by RTAO Nos. 212-2008 and 221-2008 issued by the CIR.

Having been established that the validity of a final and executory assessment can no longer be questioned on appeal, this issue merits no more than a brief discussion as the assailed Decison has amply discredited the petitioner's theory regarding the lack of authority of Dir. Gandarosa.

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[22] G.R. No. 134062, April 17, 2007.
[23] *Id., emphasis ours.*
[25] *Ferdinand Marcos II vs. Court of Appeals, Commissioner of Internal Revenue and Herminia D. De Guzman,* G.R. No. 120880, June 5, 1997.
[26] *Id.*

In addition, the title to a public office may not be contested except directly, by *quo warranto* proceedings, and it cannot be assailed collaterally, even through mandamus or a motion to set aside order.[27] Petitioner, being neither the Solicitor General nor a public prosecutor nor a person with a clear right or entitlement to the public office or position allegedly usurped or unlawfully held or exercised by then Dir. Gandarosa, has no standing to institute *quo warranto* proceedings. Petitioner's assault on the office of Dir. Gandarosa, therefore, must fail.

Moreover, even if Dir. Gandarosa was merely a *de facto* officer and no longer a *de jure* officer at the time he issued the PAN, that by itself will not divest his official acts of validity. It has been held that "the official acts of a *de facto* judge are just as valid for all purposes as those of a *de jure* judge, so far as the public or third persons who are interested therein are concerned."[28]

**Due Process was Observed.**

The third and last issue raised by the petitioner in the instant petition is whether or not the respondents observed due process in the issuance of deficiency assessment.[29]

The facts of this case show that the respondents scrupulously observed due process, from the time it issued the PAN, until even after the assessment had attained finality. Despite the petitioner's failure to protest the assessment according to the procedure and periods set forth in Section 228 of the NIRC, the respondents still responded to his "Request for Ruling" and other written communications.

If the petitioner was unable to contest the assessment in the manner prescribed by Section 228, he only has himself to blame. He simply failed to dispute the FAN and FLD within the reglementary period after he received them. To cover up his negligence, he feigned non-receipt of the FAN and FLD instead.

To make matters worse, petitioner also resorted to distorting facts to mislead this Court into believing that he was not given a fair opportunity to dispute the assessment.

In his November 8, 2010 "Request for BIR Ruling", a nine-page letter addressed to the CIR, he claimed that in his one-page letter dated February 18, 2010 to the Regional Director of Revenue Region No. 16, he asked to be furnished copies of the FAN, FLD and Notice of Delinquency. In the instant Petition for Review, he repeats the claim that "on February 18, 2010, the taxpayer asked the respondents to furnish him with a FLD and FAN so that he can properly address

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[27] *Ferdinand S. Topacio vs Associate Justice of the Sandiganbayan Gregory Santos Ong and the Office of the Solicitor General*, G.R. No. 179895, December 18, 2008, *En Banc*.
[28] *Ibid.*, citing *Tayco vs Capistrano*, 53 Phil. 866, 873 (1928).
[29] *Rollo*, p. 45.

the matter."[30] The same claim was raised in his Petition for Review filed before the Second Division.[31] In fact, however, no such request or demand was made in his February 18, 2010 letter. The body of the February 18, 2010 letter of the petitioner reads as follows, in its entirety:

> "February 18, 2010
>
> MS. ESMERALDA M. TABULE, CESO VI
> Regional Director
> Bureau of Internal Revenue
> Cagayan de Oro City
>
> Thru : MS. ESTER S. PALALA
> Revenue District officer
>
> and
>
> EDILTRUDES PEÑAFLOR
> Revenue Officer
>
> Madam;
>
> This has reference to you [sic] my tax examination for the year 2006, wherein I was informed by a collection agent that I have a tax deficiency, which is already due and demandable.
>
> In reply thereto, please be informed of the fact that I have not received a Formal Letter of Demand, Final Assessment Notice and Notice of Delinquency. Hence, I would like to request that the tax assessment should not be posted as 'delinquent' as of this time due to prematurity, considering the fact that my 30-day period within which to file a tax protest has not yet commenced to run.
>
> Further, I would appreciate it so much if you could please inform me of any action taken hereon in due time.
>
> Looking forward to your prompt and favourable response on the matter.
>
> Very truly yours,
>
> ADELARDO K. PAGENTE
> TIN: 186-380-801
>
> Copy furnished:
> BIR, National Office"

There is nothing in the foregoing letter that clearly asks any of the respondents to furnish the petitioner a copy of the FLD and FAN.

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[30] Page 4, Petition for Review.
[31] Page 6.

As the records of this case bear witness that respondents served petitioner with the required notices despite petitioner's feigned non-receipt thereof, this Court rules that due process was indeed observed.

**WHEREFORE**, considering all of the foregoing premises, the instant Petition for Review is **DENIED** for lack of merit.

**SO ORDERED.**

Ma. Belen M. Ringpis-Liban
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*