REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SOUTH COTABATO INTEGRATED PORT SERVICES, INC., *Petitioner,*	CTA Case No. 10744
	Members:
- versus -	**REYES-FAJARDO,** *Chairperson, and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 01 2026 4:28 p.m.

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DECISION

ANGELES, *J.*:

Before this Court is a *Petition for Review*[1] filed electronically on January 10, 2022 by South Cotabato Integrated Port Services, Inc. (Petitioner), with physical copies submitted on February 02, 2022. Petitioner assails the assessment issued by the Commissioner of Internal Revenue (Respondent) for taxable year 2017 (TY 2017), covering income tax, value-added tax (VAT), expanded withholding tax (EWT), and administrative penalties. In a *Supplemental Petition for Review,*[2] filed personally on March 18, 2022 petitioner also seeks the refund or issuance of a tax credit certificate in the amount of ₱7,293,885.94, representing the amount it paid under protest.

PARTIES

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with principal office at SCIPSI Administration Building, Makar Wharf, Barangay Labangal, General Santos City.[3]

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1 *Petition for Review,* Docket – Vol. I, pp. 7 to 41.
2 *Supplemental Petition for Review,* Docket – Vol. I, pp. 195 to 207.
3 Pre-Trial Order dated January 19, 2023, Docket – Vol. I, pp. 409 to 423.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of his office, including, *inter alia*, the power to decide disputed assessments, cancel, and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 (Tax Code), as amended and other tax laws, rules, and regulations.[4]

FACTS

On July 25, 2019, petitioner received a Letter of Authority (LOA) No. eLA201500035113/LOA-127-2019-00000028[5] authorizing Revenue Officers (ROs) Cynthia Nedamo and Allan Maniago, and Group Supervisor Yesa P. Yap of the Bureau of Internal Revenue's (BIR) Large Taxpayers Division-Davao (LTD-Davao) to conduct an audit of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2017.

On October 11, 2019, petitioner received a Notice of Informal Conference[6] informing it of initial findings of deficiency taxes in the amount of ₱30,605,235.48 for TY 2017, and requesting petitioner to participate in an informal conference.

On June 25, 2020 petitioner received a Preliminary Notice of Assessment[7] (PAN) informing it of deficiency taxes due in the amount of ₱22,411,096.32. On July 10, 2020, petitioner filed its reply[8] to the PAN through registered mail.[9]

On January 15, 2021, petitioner received the Final Assessment Notices and Formal Letter of Demand (FANs/FLD) dated January 07, 2021,[10] finding deficiency income tax, VAT, EWT, and miscellaneous taxes in the total amount of ₱17,697,790.65, inclusive of surcharge and interest, and directing petitioner to pay the same.

On February 15, 2021 petitioner filed its letter-protest[11] (Protest) to the FANs/FLD with a request for reinvestigation through registered

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4 *Id.*
5 Exhibit "P-3," Docket – Vol. II, pp. 651; and Exhibit "P-29," USB.
6 Exhibit "P-4," Docket – Vol. II, pp. 652 to 661; and Exhibit "P-30," USB.
7 Exhibit "P-5," Docket – Vol. II, pp. 662 to 668; and Exhibit "P-31," USB.
8 Exhibit "P-6," Docket – Vol. II, pp. 669 to 678; and Exhibit "P-32," USB.
9 Exhibit "P-32-A," USB.
10 Exhibit "P-7," Docket – Vol. II, pp. 679 to 688; and Exhibit "P-33," USB.
11 Exhibit "P-8," Docket – Vol. II, pp. 689 to 696; and Exhibit "P-34," USB.

mail.[12] Petitioner raised the lack of factual and legal bases for the assessments of deficiency income tax, VAT, and compromise penalties.[13]

On August 27, 2021, petitioner received[14] the Final Decision on Disputed Assessment[15] (FDDA) denying its Protest for lack of factual and legal bases and ordering petitioner to pay the amount of ₱5,714,861.79.

On September 22, 2021, the Office of the President issued Memorandum Circular (MC) No. 90 as signed by Executive Secretary Salvador C. Medialdea on September 21, 2021, pursuant to Proclamation No. 60 (s. 1992), suspending work in government offices under the Executive Branch from 3:30 p.m. onwards on September 27, 2021 in celebration of Family Week.[16] Thereafter, the BIR issued an internal memorandum dated September 24, 2021 disseminating MC No. 90 and enjoining the concerned revenue officials and employees concerned to post a copy thereof within their respective offices.[17]

On September 27, 2021, at 4:52 p.m.,[18] petitioner sent a parcel allegedly containing its *Request for Reconsideration*[19] of the FDDA addressed to respondent's office at the BIR National Office Building in Quezon City through an LBC Express, Inc. (LBC) branch in General Santos City.[20]

On September 28, 2021, petitioner filed such *Request for Reconsideration* through registered mail,[21] and also through personal filing.[22]

On December 02, 2021, petitioner received from Mr. Emiliano B. Singco, Jr., Chief of LTD-Davao, a letter dated November 19, 2021[23] stating that petitioner's *Request for Reconsideration* was stamped received on September 28, 2021. The letter stated that more than thirty (30) days had lapsed from petitioner's receipt of the FDDA; hence, the

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[12] Exhibit "P-34-A," USB.
[13] Exhibit "P-8," Docket – Vol. II, pp. 689 to 696; and Exhibit "P-34," USB.
[14] Exhibit "P-35-A," USB.
[15] Exhibit "P-9," Docket – Vol. II, pp. 697 to 703; and Exhibit "P-35", USB.
[16] Exhibit "P-15," Docket – Vol. II, p. 719 to 732; and Exhibit "P-45," USB.
[17] *Id.*
[18] Exhibits "P-37-A" and "P-37-B," USB.
[19] Exhibit "P-10," Docket – Vol. II, pp. 704 to 712; and Exhibit "P-36," USB.
[20] Exhibit "P-37," USB.
[21] Exhibit "P-12," Docket – Vol. II, p. 714; and Exhibits "P-39" to "P-40," USB.
[22] Exhibits "P-43," and "P-43-A," USB.
[23] Exhibits "P-13" and "P-44," Docket – Vol. I, p. 143.

tax assessments had become final, executory, and demandable, and collection enforcement proceedings would be instituted by the BIR.[24]

On December 10, 2021, petitioner sent a letter-reply,[25] explaining the circumstances surrounding the filing of its *Request for Reconsideration.* In said letter, petitioner acknowledged that it received the FDDA on August 27, 2021 and that it had thirty (30) days, or until September 27, 2021 to either appeal to this Court or elevate the protest to respondent through a request for reconsideration.[26]

Petitioner further explained that on September 27, 2021, its liaison officer, Mr. Celeste Dulce (Mr. Dulce), arrived at the BIR National Office Building in Quezon City, at around 4:50 p.m. to personally file the *Request for Reconsideration.*[27] Petitioner claims, however, that Mr. Dulce was informed by a security guard to return the following day since the officer-in-charge of receiving documents had already left the premises pursuant to an internal announcement allowing the early dismissal of employees.[28] Attached to petitioner's letter-reply was an affidavit executed by Mr. Dulce on December 10, 2021.[29]

Petitioner also narrated that on the same day, its accounting supervisor, Ms. Karen Bejarin (Ms. Bejarin), arrived at the Post Office of General Santos City at around 4:00 p.m. to file the *Request for Reconsideration* through registered mail. However, she failed do so as the Post Office was already closed.[30] Records show that an affidavit was executed by Ms. Bejarin on December 29, 2021 stating that she arrived at the Post Office at around 4:30 p.m., and thereafter sent the *Request for Reconsideration* through LBC at 4:49 p.m.[31]

Records further disclose an LBC official receipt describing a parcel said to contain "DOCS AND CD ONLY" sent from General Santos City and addressed to respondent's office at the BIR National Office Building at 4:52 p.m. on September 27, 2021.[32]

On December 13, 2021, petitioner received an email[33] from RO Diana Lacro of the Collection Section of LTD-Davao, containing an

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[24] *Id.*
[25] Exhibit "P-15," Docket – Vol. II, p. 719 to 732; and Exhibit "P-45," USB.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id;* and Exhibit "P-11," Docket – Vol. II, p. 878.
[30] Exhibit "P-15," Docket – Vol. II, pp. 719 to 732; and Exhibit "P-45," USB.
[31] Exhibit "P-11-1," Docket – Vol. II, p. 879.
[32] Exhibit "P-37," USB.
[33] Exhibit "P-14," Docket – Vol. II, pp. 717 to 718; and Exhibit "P-46," USB.

updated computation of its "delinquent account," in the amount of ₱7,293,885.94.

On December 15, 2021, petitioner paid[34] such amount through the BIR e-Filing and Payment System.

On December 29, 2021, petitioner sent a letter[35] to LTD-Davao through registered mail[36] stating that its payment of ₱7,293,885.94 was made under protest.

PROCEEDINGS BEFORE THIS COURT

On January 10, 2022, petitioner filed the instant *Petition for Review*[37] through electronic mail.

Meanwhile, on January 28, 2022, petitioner sent a letter[38] dated January 27, 2022 to LTD-Davao through registered mail,[39] requesting the issuance of a cash refund or tax credit certificate in the amount of ₱7,293,885.94 representing erroneously and wrongfully paid taxes.

On January 30, 2022, this Court lifted the temporary prohibition on the physical filing of pleadings.[40] Thus, on February 02, 2022, petitioner submitted the physical copies of its *Petition for Review* before this Court.

On February 09, 2022, petitioner received a letter-reply from the BIR dated February 03, 2022,[41] stating that the assessment was already considered as final, executory, and demandable at the time petitioner filed its *Request for Reconsideration* on September 28, 2021, and that the same would no longer be entertained.

On March 07, 2022, petitioner received a letter dated February 23, 2022[42] denying its previous claim for refund. Thus, on March 18, 2022, petitioner filed before this Court a *Motion for Leave of Court to file Supplemental Petition for Review* with the attached *Supplemental Petition for Review* praying for a refund refund or issuance of a tax

[34] Exhibits "P-17-1" to "P-17-4," Docket – Vol. II, pp. 744 to 763; and Exhibits "P-47" to "P-54," USB.
[35] Exhibit "P-16," Docket – Vol. II, pp. 734 to 748; and Exhibit "P-55," USB.
[36] Exhibit "P-55-D," USB.
[37] Petition for Review, Docket – Vol. I, pp. 7 to 41.
[38] Exhibit "P-24," Docket – Vol. II, pp. 788 to 798; and Exhibit "P-57," USB.
[39] Exhibit "P-57-B," USB.
[40] CTA Memorandum dated January 30, 2022.
[41] Exhibit "P-25," Docket – Vol. II, p. 799; and Exhibit "P-56," USB.
[42] Exhibit "P-26," Docket – Vol. II, pp. 800 to 801; and Exhibit "P-58," USB.

credit certificate in the amount of ₱7,293,885.94.[43] The Court admitted the *Supplemental Petition for Review* in a Resolution dated May 12, 2022.[44]

On May 04, 2022, respondent filed his *Answer*[45] to the *Petition for Review*. Respondent likewise filed a *Manifestation*[46] adopting said *Answer*[47] as his answer to the *Supplemental Petition for Review*. The BIR Records were then transmitted to this Court on July 05, 2022, consisting of one (1) folder containing pages 1 to 891.

On August 18, 2022, the parties signed a *No Agreement to Mediate*.[48] Respondent filed his Pre-Trial Brief[49] on September 19, 2022, while petitioner filed its Pre-Trial Brief[50] on October 17, 2022. Pre-trial was conducted on October 20, 2022, and on November 10, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*.[51] Thereafter, the Pre-Trial Order[52] was issued.

Trial ensued, and both parties presented and offered their respective documentary and testimonial evidence.

Petitioner presented the testimonies of its parent company's Global Tax Head, Atty. Benjamin Edison M. Gorospe III (Atty Gorospe), and of Atty. Maria Myla S. Maralit, the Court commissioned Independent Certified Public Accountant (ICPA). On March 23, 2023, the ICPA Report[53] was submitted.

On May 03, 2023, petitioner filed its *Formal Offer of Evidence*,[54] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 03 May 2023)*[55] on May 11, 2023. The Court resolved petitioner's *Formal Offer of Evidence* in a Resolution dated June 22, 2023.[56] Petitioner thereafter filed an *Omnibus Motion*[57] for reconsideration,

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[43] Docket – Vol. I, pp. 195 to 207.
[44] Docket – Vol. I, pp. 261 to 262.
[45] Docket – Vol. I, pp. 238 to 258.
[46] Docket – Vol. I, pp. 265 to 267.
[47] Docket – Vol. I, pp. 238 to 258.
[48] Docket – Vol. I, p. 302.
[49] Docket – Vol. I, pp. 309 to 314.
[50] Docket – Vol. I, pp. 318 to 333.
[51] Docket – Vol. I, pp. 334 to 346.
[52] Docket – Vol. I, pp. 409 to 423.
[53] Exhibit "P-27," Docket – Vol. I, pp. 448 to 549.
[54] Docket – Vol. II, pp. 609 to 639.
[55] Docket – Vol. II, pp. 803 to 806.
[56] Docket – Vol. II, pp. 819 to 821.
[57] Docket – Vol. II, pp. 825 to 831.

and the same was granted by the Court in Resolutions dated November 09, 2023[58] and November 08, 2024.[59]

For respondent, the testimony of RO Cynthia O. Nedamo was presented on July 06, 2023. Respondent filed his *Formal Offer of Evidence*[60] on July 12, 2023, to which petitioner filed its *Comment (Re: Formal Offer of Evidence dated July 10, 2023)*[61] on July 27, 2023. Respondent's *Formal Offer of Evidence* was resolved by the Court in a Resolution dated November 09, 2023, admitting all of the offered exhibits.[62]

On December 13, 2024, petitioner filed its *Memorandum*.[63] On the other hand, respondent manifested[64] that he would be adopting his *Answer*[65] as his Memorandum.

The case was submitted for decision on February 03, 2025.[66]

ISSUES

The issues, as stated in the Pre-trial Order are:[67]

1. Whether or not the deficiency income tax, value-added tax, expanded withholding tax in the total amount of ₱ 7,293,885.94 for taxable year 2017 are null and void; and

2. Whether or not petitioner is entitled to the refund of or the issuance of a tax credit certificate for the erroneously paid deficiency income tax, value-added tax, expanded withholding tax, and administrative penalties for taxable year 2017.

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[58] Docket – Vol. II, pp. 862 to 865.
[59] Docket – Vol. II, pp. 903 to 904.
[60] Docket – Vol. II, pp. 834 to 843.
[61] Docket – Vol. II, pp. 845 to 853.
[62] Docket – Vol. II, pp. 862 to 865.
[63] Docket – Vol. II, pp. 906 to 948.
[64] Docket – Vol. II, pp. 950 to 954.
[65] Docket – Vol. I, pp. 238 to 258.
[66] Docket – Vol. II, p. 957.
[67] Docket – Vol. I, pp. 409 to 423.

ARGUMENTS OF THE PARTIES

Petitioner's Arguments

Petitioner argues that respondent's right to assess EWT for the period of January to July of TY 2017, and VAT for the 1st and 2nd quarters of TY 2017 had already prescribed. Petitioner claims that the service of the FLD on January 15, 2021 was beyond the applicable three (3)-year prescriptive period, even after considering the suspension of prescriptive periods under Revenue Memorandum Circular (RMC) Nos. 34-2020,[68] 74-2020,[69] and 77-2020.[70]

Petitioner further argues that the assessments are void for violation of due process. It claims that the PAN, FANs/FLD and FDDA insufficiently states the legal bases for the deficiency tax assessments and failed to state the facts on which they were based.

Petitioner points out that the disallowance of input taxes in the FANs/FLD merely referred to the alleged non-compliance with invoicing requirements without identifying the specific invoices or receipts found to be defective. Petitioner also claims that the FDDA failed to show how respondent computed the assessed amount. Petitioner adds that the alleged deficiency interest and surcharges were imposed without factual and legal basis, and were communicated only through an email after the issuance of the FDDA.

Petitioner likewise argues that the FANs/FLD did not make a definite and final demand for payment because it merely "requested" petitioner to pay the alleged deficiency tax liabilities.

In any case, petitioner maintains that the assessments for deficiency income tax, VAT, EWT, and administrative penalties for TY 2017 are without factual and legal basis.

Finally, petitioner claims that it is entitled to a refund or the issuance of a tax credit certificate in the amount of ₱7,293,885.94, representing the amount it paid under protest pursuant to allegedly erroneous and illegal assessments on account of the violation of petitioner's right to due process and the lack of factual and legal bases.

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[68] Suspending the Running of the Statute of Limitations in the Assessment and Collection of Taxes Pursuant to Section 223 of the Natonal Internal Revenue Code of 1997, As Amended, Due to the Declaration of a National Emergency From the Corona Virus Disease 2019 (Covid 19) Situation, March 27, 2020.

[69] Amending and/or Clarifying Certain Provisions of RMC 34-2020, July 15, 2020.

[70] Clariffing ECQ as referred to under RMC No.74-2020, July 30, 2020.

Respondent's Counter-Arguments

Respondent counters by way of *Answer*[71] that this Court has no jurisdiction over the case because the assessment has already become final, executory, and demandable. Respondent asserts that petitioner received the FDDA on August 27, 2021, and that the thirty (30)-day period to question the same had already lapsed by the time petitioner filed its *Request for Reconsideration* on September 28, 2021.

Respondent further contends that petitioner's filing of the *Request for Reconsideration* before the respondent did not toll the thirty (30)-day period to appeal to this Court.

Assuming that this Court has jurisdiction, respondent argues that the right to assess petitioner's deficiency VAT and EWT has not yet prescribed. According to respondent, petitioner substantially underdeclared receipts and sales in its VAT and income tax returns, thereby warranting the application of the ten (10)-year prescriptive period.

Respondent further maintains that petitioner was not denied due process, as petitioner was sufficiently informed of the factual and legal bases of the assessments and was afforded every opportunity to refute the same. Respondent likewise argues that the FANs/FLD contained a valid demand, citing the dictionary definition of "demand" as a formal request. Lastly, respondent insists that the assessments for deficiency income tax, VAT, EWT, and compromise penalties are correct.

RULING OF THE COURT

The Petition for Review was filed within the extended period counted from petitioner's receipt of the November 19, 2021 letter

At the outset, We address the timeliness of the *Petition for Review* filed before this Court.

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[71] Docket – Vol. I, pp. 238 to 258.

It bears emphasis that this Court is a court of special and limited jurisdiction, and may take cognizance only of matters that are clearly within its jurisdiction.[72] Section 7 (a)(1) of Republic Act (RA) No. 1125,[73] as amended by RA No. 9282,[74] states:

> 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 Code or other laws administered by the Bureau of Internal Revenue;

Similarly, Section 3 (a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals,[75] states:

> SEC. 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (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 Code or other laws administered by the Bureau of Internal Revenue;

This Court has the exclusive appellate jurisdiction to review the decisions of respondent in relation to **disputed assessments**, provided, that the appeal is brought to this Court within the applicable thirty (30)-day period under Section 11 of RA No. 1125,[76] as amended by RA No. 9282,[77] which states:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the

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[72] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014 [Per J. Perlas-Bernabe, First Division].
[73] Republic Act No. 1125, June 16, 1954.
[74] Republic Act No. 9282, March 30, 2004.
[75] A.M. No. 05-11-07-CTA, September 16, 2008.
[76] Republic Act No. 1125, June 16, 1954.
[77] Republic Act No. 9282, March 30, 2004.

> Commissioner of Internal Revenue x x x may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Here, petitioner received the FDDA on August 27, 2021. It thereafter filed a *Request for Reconsideration*. On December 02, 2021, petitioner received a letter dated November 19, 2021[78] informing it that the *Request for Reconsideration* was stamped received only on September 28, 2021, beyond thirty (30)-days from receipt of the FDDA. The letter further stated that the assessments had already become final, executory, and demandable, and that collection enforcement proceedings would be instituted.

Petitioner then counted the thirty (30)-day period to appeal from its receipt of letter dated November 19, 2021[79] on **December 02, 2021**.

On December 21, 2021, this Court issued CTA Circular No. 02-2021,[80] suspending the running of periods to file pleadings and other court submissions and granting an additional period of seven (7) calendar days from January 04, 2022 for the filing of pleadings and court submissions falling due during the suspension period.

Thereafter, on January 05, 2022, this Court prohibited the personal filing of pleadings and submissions in view of the surging Coronavirus-19 cases.[81] On January 10, 2022, this Court issued a Memorandum[82] in accordance with CTA *En Banc* Resolution No. 4-2021,[83] stating that the filing of a petition for review may be made electronically through this Court's official email address and with a subsequent submission of physical copies within five (5) calendar days, counted from the time physical submission of pleadings would again be permitted.

On January 10, 2022, petitioner filed the instant *Petition for Review* through electronic mail.

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[78] Exhibits "P-13" and "P-44," Docket – Vol. I, p. 143.
[79] Exhibits "P-13" and "P-44," Docket – Vol. I, p. 143.
[80] Re: Extension Of The Deadlines For The Filing Of Any And All Pleadings And Other Court Submissions With The Court Of Tax Appeals In Light Of Super Typhoon Odette, CTA Circular No. 02-2021.
[81] CTA Memoranda dated January 05, 2022, January 07, 2022, January 09, 2022, and January 10, 2022.
[82] CTA Memorandum dated January 10, 2022.
[83] Pleadings, Motions and Other Court Submissions Filed by Email, CTA *En Banc* Resolution No. 04-2021.

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On January 30, 2022, this Court permitted[84] the resumption of personal filing of pleadings. Thus, on February 02, 2022, petitioner submitted physical copies of its *Petition for Review*.

Accordingly, the *Petition for Review* was filed within the extended period.

This conclusion, however, only resolves the **timeliness** of the *Petition for Review* filed before this Court as reckoned from the November 19, 2021 letter.[85] The Court must still determine whether petitioner timely perfected its appeal from the FDDA, which will necessarily determine whether this Court acquired jurisdiction over the subject matter, as will be discussed below.

The Request for Reconsideration before respondent CIR was not timely filed, thereby rendering the assessment final and executory

To recall, under Section 7 (a)(1) of RA No. 1125,[86] as amended by RA No. 9282,[87] what is appealable to this Court, among others, is the decision of respondent in a **disputed assessment.**[88] An assessment becomes disputed after the taxpayer files a valid protest thereto at the administrative level.[89] Section 228 of the Tax Code, as amended, provides for the procedure in protesting an assessment, to wit:

> SEC. 228. Protesting of Assessment. -
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> x x x
>
> **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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84 CTA Memorandum dated January 30, 2022.
85 Exhibits "P-13" and "P-44," Docket – Vol. 1, p. 143.
86 Republic Act No. 1125, June 16, 1954.
87 Republic Act No. 9282, March 30, 2004.
88 *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016 [Per J. Mendoza, Second Division].
89 *Id.*

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

Moreover, Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 implements Section 228 of the Tax Code, as amended, and pprovides that if the protest is denied, the taxpayer may appeal from the FDDA as follows:[90]

> 3.1.4 Disputed Assessment. x x x
>
> **<u>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.</u>** 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. (Emphasis and underscoring supplied)
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final

[90] Revenue Regulations No. 18-2013, November 28, 2013.

> decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other. (Emphasis and underscoring supplied)

Based on the foregoing, where a protest is denied by respondent's duly authorized representative, the taxpayer may either: (i) file an appeal to this Court within thirty (30) days from receipt of the duly authorized representative's decision, **or (ii) elevate his protest through a request for reconsideration to respondent CIR within the same thirty (30) day period.**

Here, petitioner chose the latter remedy.

To recall, petitioner received the FDDA on **August 27, 2021**. It therefore had thirty (30) days therefrom, or until September 26, 2021, within which to pursue the proper remedy. Since September 26, 2021 fell on a Sunday, petitioner had until the next working day, **September 27, 2021**, to appeal to this Court or elevate the protest to respondent.

Petitioner claims that it filed its *Request for Reconsideration*[91] of the FDDA with respondent on September 27, 2021.

However, on the basis of the totality of the evidence presented, this Court is not persuaded.

Petitioner first claims that its liaison officer, Mr. Dulce, went to the BIR National Office at around 4:50 p.m. on September 27, 2021 to personally file the *Request for Reconsideration*,[92] but was supposedly informed by a security guard that the personnel assigned to receive documents addressed to the Office of the Commissioner had already left due to an early dismissal of government employees.

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[91] Exhibit "P-10," Docket – Vol. II, pp. 704 to 712; and Exhibit "P-36," USB.
[92] *Id.*

Petitioner also claims that its accounting supervisor, Ms. Bejarin, attempted to file the *Request for Reconsideration*[93] through registered mail, but was unable to do so because the Post Office in General Santos City was already closed by 4:30 p.m.

These allegations, however, were not established by competent and satisfactory evidence.

Petitioner merely relied on the affidavits[94] of Mr. Dulce and Ms. Bejarin. In *Republic of the Philippines v. Manotoc, et. at.,*[95] the Supreme Court explained that affidavits are generally treated as hearsay unless the affiants themselves take the witness stand and testify thereon. Thus:

> Basic is the rule that, **while affidavits may be considered as public documents if they are acknowledged before a notary public, these <u>Affidavits are still classified as hearsay evidence.</u>** The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, **<u>affidavits are generally rejected for being hearsay</u>, unless the affiants themselves are placed on the witness stand to testify thereon.** (emphasis and underscoring supplied)

Such jurisprudential pronouncement is likewise consistent with Section 37 of Rule 130 of the Revised Rules on Evidence, which defines hearsay in the following manner:

> Section 37. Hearsay. -Hearsay is **<u>a statement other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein.</u>** A statement is (1) an oral or written assertion or (2) a non-verbal conduct of a person, if it is intended by him or her as an assertion. Hearsay evidence is inadmissible except as otherwise provided in these Rules.
>
> A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with the declarant's testimony,

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93 *Id.*
94 Exhibits "P-11" and "P-11-1," Docket – Vol. II, pp. 878 to 879.
95 G.R. No. 171701, February 08, 2012 [Per J. Sereno, Second Division] *citing People's Bank and Trust Company (now Bank of the Philippine Islands v. The Honorable Tomas R. Leonidas, Presiding Judge of Branch XXXVIII of the Court of First Instance of Manila and Melchor Samonte*, G.R. No. 47815, March 11, 1992 [Per J. Nocon, Second Division]; and *People of the Philippines v. Rogelio M. Pimentel and Herminigildo Q. Reyes*, G.R. Nos. 251587-88, June 15, 2022 [Per J. Gaerlan, Third Division].

> and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; (b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or (c) one of identification of a person made after perceiving him or her. (Emphasis and underscoring supplied)

Thus, hearsay statements are offered to prove the truth of their contents despite the declarant failure to testify at a trial.

Here, petitioner offered the affidavits of Mr. Dulce[96] and Ms. Bejarin[97] to prove the truth of the matters asserted therein, specifically, the alleged attempts to file the *Request for Reconsideration*[98] on September 27, 2021. Petitioner's *Formal Offer of Evidence*[99] states:

Exhibit	Document	Purpose
P-9	Final Decision on Disputed Assessment dated August 27, 2021	To prove: 1. The factual circumstances surrounding the issuance of Respondent's deficiency tax assessments against the Petitioner for TY 2017; 2. That Respondent's right to assess Petitioner deficiency income tax, VAT, and EWT for TY 2017 has already prescribed; 3. That Petitioner's right to due process was violated; 4. **<u>That Petitioner timely filed its administrative appeal to the CIR</u>** within the period provided under the Tax Code and the relevant implementing rules and regulations; and 5. That Respondent's assessment for deficiency income tax, VAT and EWT for TY 2017 lack legal and/or factual bases. (Emphasis and underscoring supplied)
P-10	Request for Reconsideration dated September 27, 2021	*- do -*

96 Exhibit "P-11," Docket – Vol. II, p. 878.
97 Exhibit "P-11-1," Docket – Vol. II, p. 879.
98 Exhibit "P-10," Docket – Vol. II, pp. 704 to 712; and Exhibit "P-36," USB.
99 Docket – Vol. II, pp. 609 to 639.

P-11	Affidavit of Celeste Dulce dated December 10, 2021	*- do -*
P-11-1	Affidavit of Karen Joy Bejarin dated December 29, 2021	*- do -*

However, neither Mr. Dulce nor Ms. Bejarin were presented as a witness to testify on the matter. Petitioner offered no explanation for its failure to present its own employees to testify on the alleged attempted filings at the BIR National Office and at the Post Office in General Santos City. Consequently, and most importantly, respondent was deprived of the opportunity to cross-examine them on the circumstances surrounding the alleged attempted filings.

Petitioner likewise failed to present other evidence that may corroborate the alleged attempted filings, such as the visitor's log or visitor's pass, the security log, or the testimony of the security guard who allegedly instructed Mr. Dulce to return the following day.

Instead, petitioner merely presented the testimony of its parent company's Global Corporate Tax Head, Atty. Gorospe. However, Atty. Gorospe did not witness the attempts to file the *Request for Reconsideration*[100] at the BIR National Office or at the Post Office in General Santos City. He therefore had no personal knowledge of the material facts surrounding the alleged attempted filings. Neither could he competently testify on the truth of the contents of affidavits executed by other persons.

At most, the affidavits of Mr. Dulce and Ms. Bejarin merely establish that such affidavits were executed. They do not, by themselves, establish that petitioner timely filed its *Request for Reconsideration*[101] on September 27, 2021.

Petitioner also cannot be saved by the alleged transmission of the *Request for Reconsideration*[102] through LBC on September 27, 2021.

The LBC official receipt[103] states the following details:

Origin	:	MIN-GES01-KCC MALL GENSAN
Tran Date	:	09/27/2021 04:52:39 PM

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[100] Exhibit "P-10," Docket – Vol. II, pp. 704 to 712; and Exhibit "P-36," USB.
[101] *Id.*
[102] *Id.*
[103] Exhibit "P-37," USB.

Delivery Date	:	10/01/2021 – 10/04/2021
Area Dest.	:	METRO MANILA
Tran. Type	:	Delivery
Cut-Off	:	11:20 AM
Said to Contain	:	DOCS AND CD ONLY

As may be gleaned from the foregoing, such receipt fails to establish that petitioner filed its *Request for Reconsideration*[104] on September 27, 2021.

First, the receipt merely states that the parcel was "said to contain" "DOCS AND CD ONLY." It does not identify the specific documents included in the parcel. As noted in the ICPA Report, the receipt does not verify whether the parcel actually contained petitioner's *Request for Reconsideration.*[105]

Second, the receipt shows that the parcel was accepted by LBC in General Santos City at 4:52 p.m. of September 27, 2021, after the indicated cut-off time of 11:20 a.m., with Metro Manila as its destination and a delivery date of "10/01/2021 – 10/04/2021." Thus, even assuming that the parcel contained petitioner's *Request for Reconsideration*,[106] the receipt is at best, proof of mailing, and not proof of delivery.

Third, petitioner's reliance on the date of mailing is misplaced. RR No. 12-99, as amended by RR No. 18-2013, governs the manner of protesting an assessment, but does not provide that the date of mailing through a private courier shall be deemed the date of filing of letters, and submissions.

Even assuming the suppletory application of the Rules of Court, Section 3 of Rule 13 thereof treats the date of mailing as the date of filing only in cases of registered mail and **<u>accredited</u>** courier. Thus:

> Section 3. Manner of filing. – The filing of pleadings and other court submissions shall be made by:
>
> (a) Submitting personally the original thereof, plainly indicated as such, to the court;
> (b) Sending them **by registered mail**;
> (c) Sending them **<u>by accredited courier</u>**; or

[104] *Id.*
[105] Exhibit "P-27," Docket – Vol. I, pp. 448 to 549.
[106] Exhibit "P-10," Docket – Vol. II, pp. 704 to 712; and Exhibit "P-36," USB.

> (d) Transmitting them by electronic mail or other electronic means as may be authorized by the court in places where the court is electronically equipped.
>
> In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. **<u>In the second and third cases, the date of the mailing</u>** of motions, pleadings, and other court submissions, and payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, **<u>shall be considered as the date of their filing</u>**, payment, or deposit in court. The envelope shall be attached to the record of the case. In the fourth case, the date of electronic transmission shall be considered as the date of filing. (Emphasis and underscoring supplied)

It is crucial to emphasize that at the time petitioner sent the parcel on September 27, 2021, **LBC had not yet been accredited as a private courier for purposes of filing under the Rules of Court.** It was only on February 13, 2023 that the Supreme Court granted accreditation to LBC through Office of the Court Administrator Circular No. 54-2023.[107]

It is established in jurisprudence that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof. Instead, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.[108]

Absent any rule deeming the date of mailing through an unaccredited private courier as the date of filing of an administrative appeal with respondent, petitioner cannot rely on the September 27, 2021 LBC transmittal as the filing date of its *Request for Reconsideration*.[109]

Petitioner is likewise not entitled to a relaxation of the rules. MC No. 90, which authorized the dismissal of government employees from work at 3:30 p.m. on September 27, 2021 in celebration of Family Week, was issued on September 22, 2021. The BIR also issued an internal memorandum dated September 24, 2021 disseminating the same to its offices.

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[107] Accreditation of LBC Express, Inc. as a Courier Service Provider nationwide for a period of one (1) year from 1 February 2023 to 31 January 2024, OCA Circular No. 54-2023, https://oca.judiciary.gov.ph/wp-content/uploads/OCA-Circular-No.-54-2023.pdf (last accessed June 16, 2026).

[108] *Efren T. Uy, Efren T. Uy, Nelia B. Lee, Rodolfo L. Menes And Quinciano H. Lui v. Judge Alan L. Flores, Presiding Judge, Regional Trial Court, Branch 7, Tubod, Lanao Del Norte*, A.M. No. RTJ-12-2332, June 25, 2014 [Per J. Villarama, Jr., First Division]; and *Philippine National Bank v. Commissioner of Internal Revenue,* G.R. No. 172458, December 14, 2011 [Per J. Leonardo-De Castro, First Division].

[109] Exhibit "P-10," Docket – Vol. II, pp. 704 to 712; and Exhibit "P-36," USB.

Petitioner had the full thirty (30)-day period within which to pursue its remedy. Having waited until the last hour, petitioner took the risk and must bear the consequences of its failure to timely perfect its recourse.

In view of the foregoing circumstances, the Court rules that petitioner failed to prove that it timely filed its *Request for Reconsideration*[110] on September 27, 2021.

The records instead show that the same was filed on September 28, 2021, through registered mail and by personal filing. By then, the thirty (30)-day period from petitioner's receipt of the FDDA had already lapsed. The assessment therefore became final, executory, and demandable.

The subsequent letter issued by respondent on December 02, 2021 did not revive petitioner's lost remedy. Once the assessment had become final, executory, and demandable, respondent's action on petitioner's belated *Request for Reconsideration*[111] could not reopen the period to appeal. In fact, the letter correctly stated that "the matter is beyond the authority of the undersigned," as there was no longer any disputed assessment to speak of. The taxpayer cannot revive a reglementary period simply by filing an out-of-time administrative request.

Thus, insofar as the *Petition for Review* assails the deficiency tax assessments, the same must be dismissed.

Petitioner is not entitled to a refund

Petitioner's claim for refund must likewise fail.

To recall, petitioner paid the amount of ₱7,293,885.94 on December 15, 2021. Thereafter, it filed an administrative claim for refund or tax credit certificate, and, upon denial thereof, filed the *Supplemental Petition for Review*[112] before this Court.

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[110] *Id.*
[111] *Id.*
[112] *Supplemental Petition for Review*, Docket – Vol. I, pp. 195 to 207.

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This Court recognizes that taxes paid under protest pursuant to an erroneous or illegal assessment or collection may, in proper cases, be the subject of a claim for refund under Section 229 of the Tax Code, as amended. Thus:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

However, Section 229 cannot be used to indirectly attack an assessment that had already become final, executory, and demandable. In *Brewery Properties, Inc. v. Commissioner of Internal Revenue,*[113] the Supreme Court held that a taxpayer is precluded from questioning the validity of a final and executory assessment under the guise of claiming a refund of the taxes it paid under protest. Thus:

> Considering that petitioner did not exercise the remedy of appeal as provided in Section 228, the FDDA became final, executory and demandable. Petitioner is thereby precluded from questioning the legality or validity of the assessment in the guise of claiming a refund of the DST and penalties it paid under protest. Simply put, **petitioner's administrative claim for refund is not a valid substitute for the lost remedy of appeal** to question the final decision of the CIR on the disputed assessment. Conversely, the validity of the said deficiency DST and penalties pursuant to a final and executory FDDA may not be assailed nor be the subject of a claim for refund under Section 229.
>
> x x x
>
> To be clear, this Court does *not* prohibit the payment of taxes under protest. Nonetheless, to validly claim a refund, **the disputed assessment must have been appealed before the CTA within the 30-day period from receipt of the FDDA,** especially when the cited ground for refund is the erroneous or illegal assessment. The failure to appeal the disputed assessment to the CTA within the 30-day period will render it final, executory and demandable. (Emphasis and underscoring supplied)

[113] G.R. No. 239260, March 06, 2023.

The same principle applies here. Petitioner's refund claim is premised on the alleged invalidity of the deficiency tax assessments. However, petitioner had already lost the right to dispute said assessments when it failed to timely perfect its recourse from the FDDA. The validity of an assessment which has lapsed into finality may not be collaterally attacked through a claim for refund.

Hence, the claim for refund must likewise be denied.

In view of the foregoing, the Court finds it unnecessary to pass upon petitioner's remaining arguments. These matters go into the validity of assessments that had already become final, executory, and demandable.

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

SO ORDERED.

HENRY S. ANGELES
Associate Justice

I CONCUR:

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

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice