REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GRANDWORTH RESOURCES CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8765

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

APR 17 2018

1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed by petitioner Grandworth Resources Corporation on February 7, 2014, to appeal the constructive denial by respondent of petitioner's protest against the Formal Letter of Demand (FLD) and Assessment Notices which assessed petitioner deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for the taxable year 2008 amounting to Seven Million Six Hundred Twenty-Eight Thousand Seven Hundred Eighty-Four Pesos and 47/100 (Php7,628,784.47), inclusive of interest.

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[1] Petition for Review, Docket, Vol. I, pp. 6-19.

THE FACTS

Petitioner Grandworth Resources Corporation is a domestic corporation duly organized and existing under Philippine laws with principal office in Metro Manila, and duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 000-715-414-000 and registered address at 6/F Jollibee Plaza Bldg., #10 Emerald Avenue, Pasig City.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested under the law with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, and approve and grant applications for tax refunds or tax credits pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other tax laws, rules and regulations.[3]

On June 23, 2009, petitioner received a Letter of Authority (LOA) No. 2008-00020379 dated June 10, 2009 authorizing Revenue Officer Mariano Flores (RO Flores) and Group Supervisor Praxedio F. Tulio II (GS Tulio) to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2008 to December 31, 2008.[4] Attached to the said LOA was the BIR's First Request for the Presentation of Records dated June 11, 2009.[5]

In response to the BIR's First Request for the Presentation of Records, petitioner submitted on July 7, 2009 various documents listed in the request.[6]

On July 22, 2009, petitioner received from the BIR a Second Request for the Presentation of Records.[7] Petitioner complied with the request on August 11, 2009.[8]

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[2] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. II, p. 557.
[3] Par. 3, JSFI, Docket, Vol. II, pp. 557-558.
[4] Exhibit "P-3"; Exhibit "P-64", pp. 4-5.
[5] *Id.*
[6] Exhibit "P-4"; Exhibit "P-64", p. 5.
[7] Exhibit "P-5"; Exhibit "P-64", pp. 5-6.
[8] Exhibit "P-6"; Exhibit "P-64", pp. 5-6.

On August 13, 2009, petitioner received a Third and Final Notice from the BIR requiring the presentation of books of accounts and other related records. [9] On August 20, 2009, petitioner complied with the request.[10]

On November 13, 2009, petitioner received a letter dated November 10, 2009 issued by Revenue District Officer Rey Asterio L. Tambis of Revenue District Office (RDO) No. 43A – East Pasig informing it of the reassignment of the case from RO Flores to Revenue Officer Ferrari Llamzon (RO Llamzon).[11] Petitioner likewise received a Revalidation Notice dated November 17, 2009 issued by OIC-Regional Director Jonas P. Amora, BIR Revenue Region No. 7 – Quezon City (RD Amora) informing petitioner of the revalidation of LOA No. 2008-00020379 dated June 10, 2009 and of the reassignment of the case to RO Llamzon.[12]

On February 15, 2010, petitioner received another LOA with No. 2009-00012492 dated January 27, 2010 authorizing Revenue Officer Alan Bueno and Group Supervisor Maria Cecilia M. Masangya to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2008 to December 31, 2008.[13]

On February 10, 2010, petitioner filed with the BIR RDO No. 43B – West Pasig a letter dated February 8, 2010 informing them that an earlier LOA had already been issued to petitioner for the same kind of tax and period.[14] Petitioner also mentioned in the said letter that it had submitted all the documents previously requested by the BIR. Petitioner also requested for a clarification in view of the fact that the earlier LOA stated that it was registered under RDO No. 43A – East Pasig while the latter LOA mentioned that it was registered under RDO No. 43B – West Pasig.[15]

On September 14, 2011, petitioner received a Notice of Informal Conference dated July 18, 2011 informing petitioner of the

[9] Exhibit "P-7"; Exhibit "P-64", p. 7.
[10] Exhibit "P-8"; Exhibit "P-64", pp. 7-8.
[11] Exhibit "P-9"; Exhibit "P-64", pp. 8-9.
[12] Exhibit "P-10"; Exhibit "P-64", pp. 8-9.
[13] Exhibit "P-11"; Exhibit "P-64", pp. 8-9.
[14] Exhibit "P-12"; Exhibit "P-64", p. 9.
[15] *Id.*

results of the investigation of its 2008 all internal revenue tax liabilities and requesting petitioner for an informal conference.[16]

On January 10, 2012, petitioner received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated December 21, 2011.[17]

On January 25, 2012, petitioner filed its reply to the PAN.[18]

On April 2, 2012, petitioner received the FLD under Demand No. 43A-B294-08, with attached Details of Discrepancies and the corresponding Assessment Notices, all dated January 13, 2012.[19] In the Final Assessment Notice (FAN), respondent found petitioner liable for deficiency income tax, VAT, and EWT, inclusive of interest, in the aggregate amount of Php7,628,784.47 for taxable year 2008.[20]

On May 2, 2012, petitioner filed via registered mail its protest letter against the FLD/FAN wherein petitioner requested for reconsideration of the assessment.[21]

On November 14, 2012, petitioner received an undated Preliminary Collection Letter stating that petitioner should settle its tax liability in the amount of Php7,628,784.47 within ten (10) days from receipt thereof.[22]

On July 12, 2013, petitioner sent a letter to RD Amora wherein petitioner reiterated its request for reinvestigation and reconsideration as embodied in its protest letter dated May 2, 2012.[23]

On July 15, 2013, petitioner received a Warrant of Distraint and/or Levy (WDL) dated May 23, 2013, signed by Ruth Vivian G. Gadia, Chief of the Collection Division, BIR Revenue Region No. 7 – Quezon City.[24] *ge*

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[16] Exhibit "P-13"; Exhibit "P-64", pp. 9-10.
[17] Exhibit "P-14"; Exhibit "P-64", pp. 10-11.
[18] Exhibit "P-15"; Exhibit "P-64", pp. 11-12.
[19] Par. 4, JSFI, Docket, Vol. II, p. 558.
[20] *Id.*
[21] Exhibits "P-16" to "P-17-1"; Exhibit "P-64", pp. 12-13.
[22] Exhibit "P-18"; Exhibit "P-64", pp. 13-14.
[23] Exhibit "P-19"; Exhibit "P-64", p. 14.
[24] Exhibit "P-20"; Exhibit "P-64", pp. 14-15.

On July 30, 2013, petitioner sent a letter dated July 29, 2013 to RD Amora wherein petitioner informed the latter of petitioner's receipt of the WDL and requested that the said WDL be quashed and cancelled in order to give way for the completion of petitioner's request for reconsideration and reinvestigation of results of audit covering year 2008.[25]

On August 14, 2013, petitioner filed via registered mail an administrative appeal before the CIR.[26]

On January 9, 2014, the aggregate amount of Php7,628,784.47 representing petitioner's garnished bank deposit with Metropolitan Bank & Trust Company – Ortigas Emerald Branch (Metrobank) was credited to the BIR's account.[27]

On February 7, 2014, petitioner filed the present Petition for Review.

On April 14, 2014, respondent filed his Answer.[28]

The Pre-Trial Conference[29] was held on September 11, 2014. Petitioner's Pre-Trial Brief[30] was filed on June 13, 2014 while respondent's Pre-Trial Brief[31] was filed on June 11, 2014.

The parties filed their Joint Stipulation of Facts and Issues[32] on October 1, 2014, which was approved by the Court upon issuance of the Pre-Trial Order[33] on October 8, 2014.

During trial, petitioner presented the following witnesses: (1) Ms. Ma. Neysa Lorellie C. Manlapid[34] - Finance and Accounting Director of Jollibee Worldwide Services (JWS); (2) Ms. Christine Dianne M. Montejo[35] - Tax Officer of Jollibee Foods Corporation; and

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[25] Exhibit "P-21"; Exhibit "P-64", p. 15.
[26] Exhibit "P-22"; Exhibit "P-64", pp. 15-16.
[27] Par. 5, JSFI, Docket, Vol. II, p. 558.
[28] Docket, Vol. I, pp. 58-62.
[29] Minutes of the Hearing dated September 11, 2014, Docket, Vol. II, p. 546.
[30] Docket, Vol. I, pp. 87-117.
[31] Docket, Vol. I, pp. 83-86.
[32] Docket, Vol. II, pp. 557-572.
[33] *Id.*, pp. 575-586.
[34] Minutes of the Hearing dated October 13, 2014, Docket, Vol. II, p. 587.
[35] *Id.*

(3) Ms. Katherine O. Constantino[36] - the Court-commissioned Independent Certified Public Accountant (ICPA).

On December 10, 2014, petitioner filed its Formal Offer of Evidence (FOE).[37] Respondent failed to file Comment on petitioner's FOE as per the Records Verification Report issued by this Court's Judicial Records Division dated January 7, 2015.[38]

On January 30, 2015, the Court issued a Resolution[39] which admitted, as petitioner's evidence, Exhibits "P-1", "P-2-1", "P-2-2", "P-2-3", "P-2-4", "P-2-5", "P-2-6", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-17-1", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-63", "P-63-1", "P-64", "P-64-1", "P-65", "P-65-1", "P-70", "P-70-1" but denied the following: (1) Exhibit "P-11" for failure of the description of the actual exhibit to correspond to its description in the Formal Offer of Evidence; (2) Exhibits "P-71 to P-290", "P-377 to P-382", "P-291 to P[-]326", "P-327", "P-328 to P-334", "P-335 to P-337", "P-338 to P-340", "P-341 to P-342", "P-343 to P-350", "P-365", "P-351 to P-362", "P-385 to P-396", "P-363", "P-364", "P-366", "P-367", "P-368 to P-369", "P-370", "P-371", "P-372", "P-373", "P-374", "P-375", "P-376", "P-383", "P-384", "P-397", "P-398", "P-399", "P-400", "P-401", and "P-402" for not being found in the records; and (3) Exhibit "P-24-1" for being provisionally marked.

On February 20, 2015, petitioner filed a Motion for Partial Reconsideration[40] of this Court's Resolution dated January 30, 2015 insofar as the denial of its certain exhibits.

On the other hand, respondent presented the following witnesses: (1) Mr. Francis Marc C. Dela Cruz[41] – Revenue Officer, Revenue Region 7 Assessment Division; and (2) Ms. Norlika B. Datu-Haron[42] – Seizure Agent, Revenue Officer, Revenue Region 7.

[36] Minutes of the Hearing dated November 10, 2014, Docket, Vol. II, p. 611.
[37] Docket, Vol. II, pp. 612-637.
[38] *Id.*, p. 638.
[39] *Id.*, pp. 642-643.
[40] *Id.*, pp. 645-650.
[41] Minutes of the Hearing dated February 16, 2015, Docket, Vol. II, p. 644.
[42] *Id.*

Respondent filed her Formal Offer of Evidence[43] on February 26, 2015. Petitioner failed to file Comment on respondent's FOE as per the Records Verification Report issued by this Court's Judicial Records Division dated March 9, 2015.[44]

In a Resolution[45] dated April 8, 2015, this Court granted petitioner's Motion for Partial Reconsideration and accordingly, admitted Exhibits "P-11", "P-71 to P-290", "P-377 to P-382", "P-291 to P-326", "P-327", "P-328 to P-334", "P-335 to P-337", "P-338 to P-340", "P-341 to P-342", "P-343 to P-350", "P-365", "P-351 to P-362", "P-385 to P-396", "P-363", "P-364", "P-366", "P-367", "P-368 to P-369", "P-370", "P-371", "P-372", "P-373", "P-374", "P-375", "P-376", "P-383", "P-384", "P-397", "P-399", "P-400", "P-401", and "P-402". In the same Resolution, this Court also admitted, as respondent's evidence, Exhibits "R-1, "R-2", "R-3", "R-4", "R-4-a", "R-4-b", "R-4-c", "R-13" and "R-13-a", subject to this Court's evaluation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. In the same Resolution, the Court granted the parties a period of thirty (30) days from their receipt thereof within which to file their Memoranda.

On May 14, 2015, petitioner filed a Motion for Leave to Admit Amended Petition for Review (With Motion to Defer Filing of Memorandum) and attached thereto its Amended Petition for Review.[46] In its Amended Petition for Review, petitioner prays of this Court not only to declare respondent's assessment for deficiency income tax, VAT and EWT including interest for taxable year 2008 in the total amount of Php7,628,784.47 but also to order respondent to refund or issue in favor of petitioner a tax credit certificate in the amount of Php7,628,784.47, representing the illegally assessed and erroneously collected income tax, VAT and EWT for taxable year 2008.

On May 18, 2015, this Court ordered respondent to comment on petitioner's Motion for Leave to Admit Amended Petition for Review within ten (10) days from notice.[47] This Court likewise

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[43] Docket, Vol. II, pp. 654-658.
[44] *Id.*, p. 710.
[45] *Id.*, pp. 713-715.
[46] *Id.*, pp. 716-737.
[47] *Id.*, p. 767.

granted petitioner's Motion to Defer Filing of Memorandum and held the submission of the parties' Memoranda in abeyance.

In a Resolution[48] dated July 23, 2015, this Court denied petitioner's Motion for Leave to Admit Amended Petition for Review. Accordingly, this Court granted the parties a period of thirty (30) days from receipt thereof within which to file their respective memoranda.

On August 13, 2015, petitioner filed its Motion for Reconsideration (Re: Resolution dated July 23, 2015)[49] which this Court denied in a Resolution[50] dated November 2, 2015.

On December 2, 2015, petitioner filed a Motion for Leave to Admit Verified Amended Petition for Review with attached Verified Amended Petition for Review.[51] The said Motion was denied by this Court for lack of merit through a Resolution[52] dated February 16, 2016. Thus, on March 10, 2016, petitioner filed a Motion for Reconsideration (Re: Resolution dated February 16, 2016)[53] which was also denied by this Court in a Resolution[54] dated May 6, 2016.

On June 16, 2016, respondent filed his Memorandum.[55] On the other hand, petitioner filed its Memorandum (With Motion to Re-Open Trial)[56] via registered mail on July 21, 2016.

In a Resolution[57] dated September 20, 2016, this Court denied petitioner's Motion to Re-Open Trial for lack of merit. Thus, petitioner filed its Motion for Reconsideration (Re: Resolution dated September 20, 2016)[58] via registered mail on October 7, 2016 which this Court denied for lack of merit through a Resolution[59] dated February 9, 2017.

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[48] *Id.*, pp. 774-777.
[49] *Id.*, pp. 778-786.
[50] *Id.*, pp. 792-795.
[51] *Id.*, pp. 796-819.
[52] *Id.*, pp. 861-865.
[53] *Id.*, pp. 866-876.
[54] *Id.*, pp. 881-883.
[55] *Id.*, pp. 884-892.
[56] Docket, Vol. III, pp. 945-983.
[57] *Id.*, pp. 993-997.
[58] *Id.*, pp. 999-1011.
[59] *Id.*, pp. 1018-1020.

Aggrieved, petitioner filed a Petition for Certiorari (With Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)[60] before the Supreme Court. In its Petition before the Supreme Court, petitioner raised the issue of whether this Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner the opportunity to present its case in full and to obtain complete relief from respondent CIR's invalid deficiency tax assessments for TY 2008.

In a Minute Resolution[61] dated June 19, 2017, the Supreme Court dismissed petitioner's Petition for Certiorari for failure to sufficiently show that the questioned resolutions are tainted with grave abuse of discretion. Thus, in a Resolution[62] dated September 18, 2017, this Court submitted the present case for decision.

THE ISSUES

The parties submitted the issues[63] stated below for the Court's resolution:

a. Whether or not this Court has jurisdiction over the case;

b. Whether or not the right of respondent to make an assessment for income tax, VAT, and EWT for taxable year 2008 has prescribed;

c. Whether or not petitioner was denied due process of law;

d. Whether or not petitioner had undeclared sales of Php62,525.03 for taxable year 2008 that should have been subjected to income tax and VAT;

e. Whether or not petitioner paid salaries and wages of P7,937,559.66 that were not subjected to withholding tax; *je*

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[60] *Id.*, pp. 1023-1049.
[61] *Id.*, p. 1310.
[62] *Id.*, p. 1312.
[63] JSFI, Docket, Vol. II, p. 561-562.

f. Whether or not petitioner had income payments of Php1,180,078.49 that were not subjected to withholding tax;

g. Whether petitioner had unaccounted source of cash amounting to Php3,122,378.80 that should have been subjected to income tax and VAT;

h. Whether petitioner had, for taxable year 2008, creditable withholding taxes sufficient to cover any deficiency income taxes the respondent might determine for taxable year 2008;

i. Whether petitioner had unsupported input tax credits of Php15,471.23; and

j. Whether petitioner is liable for deficiency income tax, VAT, and EWT in the total amount of Php7,628,784.47, inclusive of interests.

THE COURT'S RULING

The Petition shall be dismissed for lack of jurisdiction.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[64] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[65] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[66] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[67]

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[64] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, 749 SCRA 570.

[65] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968).

[66] *Id.*, citing *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.

[67] *Id.*

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

In the exercise of its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the 1997 NIRC which prescribes the rules to be observed for the issuance of a deficiency tax assessment and of protesting the same. The said provision, in part, reads as follows:

> "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:

xxx xxx xxx

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

Corollarily, Section 3 of RR No. 12-99, as amended,[68] implements Section 228 of the 1997 NIRC as it lays down a more detailed procedure relative to the issuance and protest of deficiency tax assessments.

Sections 3.1.4 of RR No. 12-99, as amended, in part, provides as follows:

> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.

xxx xxx xxx

> **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. *(Emphasis supplied)* Jc

[68] As amended by Revenue Regulations No. 18-2013.

In its Petition for Review, petitioner basically alleged that after it filed its protest letter to the FLD/FAN, the next communication it received from the BIR was the Warrant of Distraint and/or Levy.[69] However, evidence shows that on November 14, 2012, petitioner had received an undated Preliminary Collection Letter stating that petitioner should settle its tax liability in the amount of Php7,628,784.47 within ten (10) days from receipt thereof.[70] The said letter relevantly reads:

> "To avoid the accumulation of interest and surcharges, **it is requested that you pay the aforesaid tax liability/ies within ten (10) days from receipt hereof at the Revenue District Officer, RDO 43A – East Pasig, Pasig City.** However, if payment had already been made, please send or bring to us your copies of the receipts of payment together with this letter to be the bases for cancelling/closing your liability/ies. **Otherwise, we shall be constrained to enforce the collection hereof thru the administrative summary remedies provided for by law, without further notice.**" *(Emphasis supplied)*

It is an established rule that a demand letter for payment of delinquent taxes may be considered a final decision on a disputed or protested assessment appealable to this Court.[71] The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.[72]

In the present case, the Preliminary Collection Letter received by petitioner on November 14, 2012 essentially constitutes a final decision on the disputed assessment and thus may be proper subject of an appeal to this Court. The tenor and language of the said letter strongly suggests a character of finality. The fact that the letter reiterated petitioner's tax deficiency assessment and requested for

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[69] Docket, Vol. I, pp. 7-8.

[70] Exhibit "P-18"; Exhibit "P-64", pp. 13-14.

[71] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005, 477 SCRA 205, 211; *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001, 361 SCRA 71, 77; *Commissioner of Internal Revenue v. Ayala Securities Corporation*, G.R. No. L-29485, March 31, 1976, 70 SCRA 204, 209; *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals*, G.R. No. L-25289, June 28, 1974, 57 SCRA 523, 525.

[72] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, Supra at Note 67.

the payment thereof with the warning that should petitioner fail to pay, respondent would be constrained to resort to administrative summary remedies to enforce collection of petitioner's deficiency taxes *without further notice* certainly indicates that it was the CIR's *final action* regarding petitioner's request for reconsideration. As the Supreme Court had fittingly stated in one case[73] with similar issue, "How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?"

This Court also notes that petitioner alleged in its Memorandum (With Motion to Re-Open Trial) dated July 21, 2016 as follows:[74]

> "51. **It is established that, in cases where Respondent does not render a decision to the taxpayer's protest, the issuance instead of a <u>collection letter</u> and/or warrant of distraint and levy is tantamount to an outright denial of the request for reconsideration or reinvestigation and makes the said request deemed rejected.** In this case, Respondent's actual act of collecting the alleged deficiency taxes from Petitioner's garnished bank account on January 9, 2014, *sans* a written decision by the CIR on Petitioner's request for reconsideration of the denial of its protest, was properly deemed by Petitioner as a denial of its request for reconsideration filed with the Office of the CIR." *(Emphasis and underscoring supplied; Citation omitted)*

Curiously enough, petitioner was apparently aware of the foregoing rule yet it failed to abide by the same.

Guided by the foregoing considerations, this Court holds that the present Petition for Review was filed out of time. Counting thirty (30) days from November 14, 2012, the date when petitioner received the Preliminary Collection Letter, petitioner had until December 14, 2012 within which to either file an appeal before this Court or to file a request for reconsideration before the Commissioner himself. Petitioner, however, filed its administrative appeal before the Commissioner only on August 14, 2013. Clearly, such an appeal was

[73] *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, Supra at Note 67.
[74] Docket, Vol. III, p. 957.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

already time-barred. By then, the deficiency tax assessment against petitioner already became final, executory and demandable. Consequently, this Court is precluded from acquiring jurisdiction over the present case.

Given that this Court has no jurisdiction to take cognizance of the present case, it has no other option but to dismiss the same.[75]

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

SO ORDERED.

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

WE CONCUR:

(On Leave)
CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

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

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[75] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 306, 312.