REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LANAO DEL NORTE ELECTRIC COOPERATIVE [LANECO],
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE represented by COMMISSIONER KIM S. JACINTO-HENARES,
Respondent.

CTA *EB* NO. 1452
(CTA Case No. 8769)

Present:

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

Promulgated:

APR 05 2017 4:20 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review[1] under Section 2(a)(1), Rule 4[2] of the Revised Rules of the Court of Tax Appeals, praying for the reversal and setting aside of the Resolution[3], dated June 19, 2014 of the Court of Tax Appeals First Division (Court in Division) and Resolution[4], dated March 31, 2016; to declare that the subject assessment is null and void; and, to prohibit the enforcement and collection of the same. The assailed resolutions dismissed petitioner's appeal

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[1] *Rollo*, CTA EB No. 1452, Petition for Review, pp. 1-34.
[2] Rule 4. Jurisdiction of the Court
Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue...
[3] *Rollo*, June 19, 2014 Resolution, pp. 36-40.
[4] *Rollo*, March 31, 2016 Resolution, pp. 42-47.

for lack of jurisdiction on the ground that the assessment has become final and executory due to petitioner's failure to timely file its protest.

The Facts

The facts, as culled from the records, are as follows:

Petitioner Lanao del Norte Electric Cooperative is an electric cooperative with certificate of franchise to distribute electricity to its covered areas within the Province of Lanao del Norte.[5]

Respondent Commissioner of Internal Revenue[6] (CIR) is being sued in an official capacity as the head of the Bureau of Internal Revenue which rendered the decision sought to be reviewed.[7]

Petitioner received the First Notice, dated December 10, 2009, and Second Notice, dated January 5, 2010,[8] informing petitioner of the examination of its books of accounts for taxable year 2008.

On February 21, 2011, petitioner received a letter, dated February 9, 2011, requesting petitioner to appear for informal conference.[9]

On February 20, 2012, petitioner received the Preliminary Assessment Notice (PAN)[10], dated February 8, 2012. On March 9, 2012, petitioner received the Formal Letter of Demand (FLD)[11] dated February 29, 2012, with attached Details of Computation/Discrepancies.[12] The FLD contained an assessment for basic deficiency Value-Added Tax (VAT) amounting to Php12,518,959.48, and interest thereon of Php7,950,396.73.[13]

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[5] *Rollo*, Petition for Review, p. 2.
[6] Formerly her Honorable Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares, now his Honorable CIR Caesar R. Dulay.
[7] *Rollo*, Petition for Review, pp. 2-3.
[8] *Rollo*, Petition for Review, p. 9; Annexes "I" and "J", *rollo*, pp. 62-63.
[9] *Rollo*, Petition for Review, pp. 9-10; Annex "K", *rollo*, p. 64.
[10] *Rollo*, Annex "P", p. 70.
[11] *Rollo*, Annex "Q", p. 71.
[12] *Rollo*, Annexes "R" and "R-1", pp. 72-73.
[13] *Rollo*, Annex "Q", p. 71.

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For various reasons, petitioner only acknowledged the FLD on September 6 and 7, 2012 through its letters to the BIR.[14] Petitioner also submitted various letters requesting for re-evaluation of the assessment against them and that the disallowed input VAT were the specific or the same amount of remittances/payment made by petitioner for VAT to National Transmission Corporation (TRANSCO)-National Grid Corporation of the Philippines (NGCP) and National Power Corporation (NAPOCOR)-Power Sector Assets and Liabilities Management Corporation (PSALM).[15]

On December 18, 2012, petitioner received the Final Decision on Disputed Assessment (FDDA). [16] Petitioner appealed the same on January 14, 2013 through the Deputy Commissioner for Operations.[17]

On January 23, 2014,[18] petitioner received the Decision signed by then CIR Kim S. Jacinto-Henares, which ruled that the assessment has become final and executory and ordered petitioner to pay the deficiency VAT plus increments.[19]

On February 20, 2014, petitioner filed its appeal with the Court in Division, docketed as CTA Case No. 8769.

Upon motion, the Court in Division issued the assailed June 19, 2014 Resolution dismissing the appeal for lack of jurisdiction. The Court in Division found that the subject assessment has become final and executory for failure of petitioner to protest against the FLD on time.[20] The Court in Division reasoned:

> In the present case, the assessment has admittedly become final and executory for failure of petitioner to protest against the Formal Letter of Demand and Final Assessment Notice on time. The law categorically states that assessment may be protested administratively within thirty (30) days from receipt, otherwise, it shall become final. As indicated in its Petition for Review, petitioner received the Formal Letter of Demand on March 9, 2012 and it protested the said

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[14] *Rollo*, p. 15.
[15] *Rollo*, pp. 16-17.
[16] *Rollo*, Annex "X", p. 84.
[17] *Rollo*, p. 18.
[18] Docket, CTA Case No. 8769, Petition for Review, p. 8.
[19] *Rollo*, Annex "H", pp. 53-61.
[20] *Rollo*, June 19, 2014 Resolution, p. 40.

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> assessment only on September 6, 2012. Since petitioner's Protest Letter was filed beyond the prescriptive period, the assessment became final and executory.
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> The records likewise reveal that even in the Decisions of OIC-Regional Director Alberto S. Olasima, Revenue Region No. 16, Cagayan De Oro City and Commissioner Kim S. Jacinto-Henares, the subject assessment has been considered as final, executory and demandable for failure of petitioner to request for a reinvestigation or to file a protest letter within the period prescribed by law.
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> WHEREFORE, respondent's "Motion to Dismiss" is GRANTED for lack of jurisdiction. Accordingly, it has no reason to resolve the other pending incidents.
>
> SO ORDERED.[21]

Petitioner's motion for reconsideration was likewise denied. Hence, this appeal before the Court *En Banc*, filed on April 28, 2016.

On July 13, 2016, respondent filed a Motion to Admit Attached Comment[22], which was subsequently granted in a Resolution [23] dated July 21, 2016. Said resolution also required the parties to submit their memoranda within thirty days from receipt of notice.

Respondent filed a Manifestation[24] that the previously filed Comment shall be adopted as respondent's Memorandum. Petitioner filed its Memorandum [25] through registered mail on September 26, 2016, which was received by this Court on October 5, 2016.

The instant case was deemed submitted for decision in the Court *En Banc*'s Resolution, dated December 27, 2016.[26]

Issues

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[21] *Rollo*, June 19, 2014 Resolution, p. 40.
[22] *Rollo*, pp. 150-155; with Comment at pp. 157-170.
[23] *Rollo*, pp. 172-174.
[24] *Rollo*, pp. 175-178.
[25] *Rollo*, pp. 181-217.
[26] *Rollo*, pp. 226-227.

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The issues raised by petitioner are:

A. Whether or not the First Division of this Court erred in ruling that the March 31, 2015 letter of Assistant Commissioner Nestor S. Valeroso is relevant to the issue raised by petitioner in its Motion for Reconsideration that it already paid the subject tax but only to dismiss the case for lack of jurisdiction on the ground that the subject tax is not a disputed assessment despite the proof of payment considering that the same has already become final and executory.

B. Whether or not the First Division is correct in ruling that the subject assessment is not a disputed assessment despite proof of payment.

C. Whether or not a void assessment is a disputed assessment that can confer jurisdiction on this Court.[27]

The issues can be consolidated into:

Whether the subject assessment is a valid assessment which has become final and executory, thereby preventing the Court in Division from acquiring jurisdiction.

Petitioner's Arguments[28]

Petitioner argues that it merely acted as a collecting agent and that the subject matter of the assessment has long been paid and remitted by the petitioner and therefore its liability is extinguished. Petitioner notes that the proof of payment of Php12,518,959.48 was confirmed and existing within the BIR records, and that the assessment of Php12,518,959.48 and its subsequent payment would result to injustice.

Considering this previous remittance to the BIR, petitioner argues that the assessment is void. Further, petitioner argues that a void assessment does not become final, executory and demandable considering that a void assessment bears no fruit.

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[27] *Rollo*, Petition for Review, p. 25-26.
[28] *Rollo*, Petitioner's Memorandum, pp. 200-215.

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Respondent's Counter-Arguments[29]

Respondent argues that the Formal Letter of Demand and Final Assessment Notice, dated February 29, 2012 have already attained finality. Respondent states that petitioner's belated filing of its protest rendered the assessment final, unappealable and demandable. Thus, the Court in Division correctly dismissed the petition for lack of jurisdiction.

Respondent argues that the Court has special jurisdiction fixed by law. Petitioner's allegations of void assessment and assertion of payment does not confer jurisdiction on the Court.

Even assuming *arguendo* that the Court has jurisdiction, respondent asserts that the assessment is valid as it arose from disallowed input tax, when petitioner erroneously deducted input tax representing pass-through charges against its output tax.

Finally, respondent argues that petitioner's evidence failed to prove that petitioner had already paid/remitted the VAT deficiency assessment.

Ruling of the Court

The petition has merit.

The Court *En Banc* has jurisdiction over the present petition.

The Court in Division issued the assailed Resolution, denying petitioner's Motion for Reconsideration, on March 31, 2016. Petitioner received said Resolution on April 14, 2016. Pursuant to Rule 8, Section 3(b)[30] of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner has fifteen (15) days,

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[29] *Rollo*, Respondent's Comment, pp. 157-168.
[30] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. xxx xxx xxx

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or until April 29, 2016, within which to file its appeal to the Court *En Banc*.

Petitioner filed its appeal on April 28, 2016[31], hence, timely filed for this Court to take jurisdiction.

The Court in Division had jurisdiction over the case under the term "other matters", pursuant to Section 7(a)(1) of RA No. 1125 and Section 3(a)(1), Rule 4 of the RRCTA.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine controversies."[32] The Court of Tax Appeals (CTA), as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[33]

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the Court's jurisdiction, as follows:

> Sec. 7. Jurisdiction. – The CTA shall exercise:
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> (a) <u>Exclusive appellate jurisdiction to review by appeal</u>, as herein provided:
>
> (1) <u>Decisions of the Commissioner of Internal Revenue in cases involving</u> disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, <u>or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;</u>[34]

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[31] *Rollo*, Petition for Review, p. 1.
[32] Guy v. Court of Appeals, G.R. Nos. 165849, 170185, 170186, 171066 and 176650, December 10, 2007, 539 SCRA 584.
[33] Commissioner of Internal Revenue v. Silicon Philippines, Inc., G.R. No. 169778, March 12, 2014, 718 SCRA 513.
[34] Underscoring ours.

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This provision is further implemented by Section 3(a)(1), Rule 4 of the RRCTA, as follows:

> Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
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> The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (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;[35]

It is settled that for the CTA to acquire jurisdiction over a "disputed assessment", the assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the CTA.[36]

On the other hand, the term "other matters" has been ruled to include, but not limited to: review of the BIR's authority and decision to compromise;[37] prescription of the CIR's right to collect taxes;[38] determination of the validity of a warrant of distraint and levy issued by the CIR and the validity of a waiver of the statute of limitations.[39] Thus, the Supreme Court has declared:

> [W]e have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the

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[35] Underscoring ours.
[36] Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, G.R. No. 148380, December 9, 2005, 447 SCRA 205.
[37] Consolidated cases of Philippine National Oil Company v. Court of Appeals, et al., and Philippine National Bank v. Court of Appeals, et al., G.R. Nos. 109976 and 112800, April 26, 2005,
[38] Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010, 635 SCRA 162.
[39] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

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> 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).
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> xxx xxx xxx
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> Furthermore, the 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.[40]

The Court in Division found that there was no disputed assessment for failure of the petitioner to file its protest within the time required, thus, dismissing the case before it for lack of jurisdiction.

However, the Court *En Banc* finds that while there is no disputed assessment, the Court in Division should have assumed jurisdiction under "other matters".

Similar to the previously ruled cases, the BIR's right to collect upon an assessment may be reviewed by the Court. In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "[a] void assessment bears no fruit.[41]

Thus, in the oft-cited case of Commissioner of Internal Revenue v. Metro Star Superama, Inc.[42], the Supreme Court stated that it "need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void

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[40] *Supra,* Note 38; underscoring supplied.
[41] Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. Nos. 159694 & 163581, January 27, 2006, 382 SCRA 180.
[42] G.R. No. 185371, December 8, 2010; 637 SCRA 633.

assessment bears no fruit."[43] It can be concluded then that once there is a finding of a void assessment, the absence or presence of a protest ceases to be relevant.

While compliance with due process requirements nor prescription were not raised specifically in the issues, petitioner still questions the validity of the assessment since it has continually raised as its defense the fact that the assessed amounts have been paid and remitted to the BIR and thus, the assessment is void.

There being a question as to whether the CIR can collect on said assessment, the Court may also look into the validity of said assessment including respondent's compliance with due process in order to determine whether the assessment was validly issued, whether the assessment became final and executory upon petitioner's failure to timely file its protest, and whether payment of the alleged deficiency tax, as proposed by petitioner, is correct which will render the amount assessed moot and academic. "The Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."[44]

The Court *En* Banc finds that the petition for review filed before the Court in Division was timely filed. Petitioner received the decision of the CIR on January 23, 2014. Counting thirty (30) days therefrom, petitioner had until February 22, 2014 within which to file its petition, thus, petitioner's appeal was timely filed on February 20, 2014.[45]

The Court *En Banc* will now determine whether petitioner's circumstances warrant the exercise of the Court in Division's jurisdiction over other matters.

Petitioner has repeatedly raised the defense that the disallowed input VAT has been paid and remitted to the BIR. On the other hand, respondent has continually ordered the payment of the said assessment for deficiency VAT and has even begun collection proceedings, as follows:

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[43] Commissioner of Internal Revenue v. Metro Star Superama, Inc., citing CIR v. Reyes, *supra*, Note 40.
[44] RRCTA, Rule 14, Section 1, par. 2.
[45] Docket, Petition for Review, p. 6.

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1. On June 28, 2012, the case docket was forwarded to the Collection Section of Revenue District (RDO) 101 for enforcement of collection.[46]

2. On August 10, 2012, petitioner received the Preliminary Collection Letter (PCL) dated August 8, 2012 from RDO 101.[47]

3. On September 26, 2012, a Second Notice for collection dated September 13, 2012 was issued to petitioner.[48]

4. On October 19, 2012, a Final Notice Before Seizure was issued to petitioner.[49]

5. A Notice of Tax Lien addressed to the Provincial Assessor of Pigcarangan, Tubod, Lanao del Norte dated March 4, 2013 was issued to establish the lien or encumbrance in favor of the government on property/properties all belonging to petitioner pursuant to Section 219 of the 1997 NIRC.[50]

6. Warrant of Distraint and/or Levy and Warrant of Garnishment issued on February 19, 2014.[51]

All these processes were issued despite petitioner's repeated requests for investigation and audit in light of its defense that said disallowed input VAT has been paid and remitted to the BIR. Thus, even the Commissioner's decision received by petitioner ordered the payment of the assessed deficiency taxes, as follows:

> WHEREFORE, this Office hereby orders LANAO DEL NORTE COOPERATIVE to pay the amount of P18,469,356.21 representing deficiency value added tax, plus increments that may have accrued thereon until actual payment thereof to the Collection Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof shall

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[46] *Rollo*, Petition for Review, Annex "X", FDDA, p. 84.
[47] *Rollo*, Petition for Review, p. 14.
[48] *Id.* at 16.
[49] *Id.* at 17.
[50] *Rollo*, Petition for Review, Annex "H", Commissioner's Decision, p. 57.
[51] Docket, pp. 153-154.

> be effected through summary remedies provided by law.[52]

The BIR has shifted its focus, from assessment of the deficiency tax to collection and enforcement of said taxes, despite petitioner's defense of payment, which if proven, would render the assessment moot or void. As between collection of the tax and alleged payment by said taxpayer, the BIR and the CIR, not only have the duty to collect, but also have the duty under Section 8(B) of the 1997 NIRC to acknowledge payment of taxes made, which provides:

> Sec. 8. Duty of the Commissioner to Ensure the Provision and Distribution of Forms, Receipts, Certificates, and Appliances, and the Acknowledgement of Payment of Taxes. –
>
> xxx xxx xxx
>
> (B) Receipts for Payment Made. – <u>It shall be the duty of the Commissioner</u> or his duly authorized representative or an authorized agent bank <u>to whom any payment of any tax is made under the provisions of this Code to acknowledge the payment of such tax</u>, expressing the amount paid and the particular account for which such payment was made in a form and manner prescribed therefor by the Commissioner. (Underscoring supplied)

Clearly, respondent's right to collect on the subject assessment and petitioner's defense that it has paid, or that the assessed amount has been paid and remitted to the BIR, are matters arising under the 1997 NIRC.

From the foregoing, the Court in Division had and should have assumed jurisdiction.

WHEREFORE, the Petition for Review is **GRANTED**. Accordingly, the Resolutions promulgated on June 19, 2014 and March 31, 2016 by First Division in CTA Case No. 8769 are **REVERSED** and **SET ASIDE**.

Let the case be **REMANDED** to the Court in Division for further proceedings in order to determine and rule on the

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[52] *Id.* at 60.

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merits of petitioner's appeal seeking the cancellation of the deficiency VAT assessment for taxable year 2008.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(With due respect, I join PJ's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

(With due respect, I join PJ's Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With due respect, I join PJ's Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

APR 05 2017 4:20p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent on the *ponencia's* proposition that the Court in Division should have assumed jurisdiction over the Petition for Review filed by Laneco Del Norte Electric Cooperative [LANECO] under "other matters" and the pronouncement that the case be remanded to the Court in Division to determine the fact of payment of the subject assessment.

In the Court in Division's Resolution dated March 31, 2016,[1] I concurred with the majority in denying LANECO's Motion for Reconsideration [Re: Resolution Promulgated June 19, 2014] thereby affirming the dismissal of the case on the ground that the Final

[1] Division Docket, pp. 515 to 520.

Assessment Notice (FAN) dated February 29, 2012 has become final and executory for LANECO's failure to file a timely protest against said FAN within the period provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 228 of the NIRC of 1997, as amended, specifies the manner in which an assessment, which is otherwise presumed correct, should be assailed. Section 228 of the NIRC of 1997, as amended, 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:
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> xxx xxx xxx
>
> 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.
>
> 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." (Boldfacing supplied)

In the case at bar, it is undeniable that no protest was filed within the 30-day period from the time LANECO received the FAN dated February 20, 2012 on March 9, 2012.[2] Consequently, the Court in Division held that the subject FAN has become **final, executory**

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[2] Petition for Review, Division Docket, p. 17.

and demandable. As a consequence of the FAN becoming final, executory and demandable, respondent has the right to enforce the collection of deficiency VAT for the taxable year 2008 against petitioner.

LANECO's defense i.e., that the FAN should have been rendered void in view of LANECO's prior payment of the deficiency VAT,[3] is a matter that should have been timely raised by LANECO in a protest letter filed pursuant to Section 228 of the NIRC of 1997, as amended.

Failure to contest the validity and correctness of the FAN within the period and in the manner prescribed by law is fatal to a taxpayer's case. In *Ferdinand R. Marcos II vs. Court of Appeals,*[4] the Supreme Court clarified the consequence of a taxpayer's failure to timely protest an assessment:

> "**Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax.** Any objection against the assessment should have been pursued following the avenue paved in Section 229 (now 228) of the NIRC on protests on assessments of internal revenue taxes." (Boldfacing supplied)

In *Protector's Services, Inc. vs. Court of Appeals*,[5] the Supreme Court upheld the dismissal by the Court of Tax Appeals (CTA) of the taxpayer's appeal for lack of jurisdiction after noting that the latter failed to file a timely protest against the assessment notices, *viz.*:

> "We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. **From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction**." (Boldfacing supplied)

In other words, with respect to assessments which became final for failure to file a timely protest, **the rule is that the validity or correctness of the assessment, in the absence of any purported**

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[3] Petition for Review, Division Docket, pp. 27 to 32.
[4] G.R. No. 120880, June 5, 1997.
[5] G.R. No. 118176, April 12, 2000.

violation of a taxpayer's right to due process, may no longer be questioned on appeal.

An assessment, however, may neither attain finality nor be the subject of a lawful execution in situations where such assessment was issued in violation of the taxpayer's right to due process of law or when the CIR's right to collect has prescribed.

In *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*,[6] the Supreme Court did not 'belabor to discuss the matter of Metro Star's failure to file its protest' considering that the Supreme Court found that **the right to due process of Metro Star was violated by the Commissioner of Internal Revenue (CIR) for failure to furnish Metro Star the Preliminary Assessment Notice.** Said the Supreme Court:

> **"xxx, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word *shall* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**
>
> The case of *CIR v. Menguito* cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R. R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.

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

The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit." (Boldfacing supplied)

In *Commissioner of Internal Revenue v. Hambrecht & Quist, Philippines, Inc.*,[7] the Supreme Court held that the CIR is divested of authority to collect taxes when his action to do so is made beyond the prescriptive period provided for by law, *viz.*:

"Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protectors Services, Inc. v. Court of Appeals*, the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide other matters related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over other matters, it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term other matters referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

> Section 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**.

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term other matters can be supported or even deduced. What is rather clearly apparent, however, is that the term other matters is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the **CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the**

[7] G.R. No. 169225, November 17, 2010.

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).

In the case at bar, the issue at hand is whether or not the BIR's **right to collect taxes** had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223(c):

> **Any internal revenue tax which has been assessed within the period of limitation** above-prescribed **may be collected** by distraint or levy or by a proceeding in court **within three years following the assessment of the tax**.

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

> Sec. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges** and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws.

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term other matters over which the CTA has appellate jurisdiction.

Furthermore, the 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.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioners 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 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.

> **To be sure, 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. However, <u>the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed</u>. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**" (Boldfacing and underscoring supplied)

As the main contention advanced by the CIR in the Motion to Dismiss LANECO's Petition for Review filed before the Court in Division is that the FAN issued against LANECO has become final and executory in view of LANECO's failure to protest the same, I submit that it is the pronouncement laid down in *Marcos II* and *Protector's Services* which should be the basis in determining whether the Petition for Review filed by LANECO before the Court in Division should prosper. As cited above, both *Marcos II* and *Protector's Services* pertain to the consequences of taxpayers' failure to file a timely protest against deficiency tax assessments.

In the *ponencia*, it is stated that the Court in Division should have assumed jurisdiction over the Petition for Review filed by LANECO under the term "other matters", pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, and Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) and following the Supreme Court's pronouncement in *Metro Star* and *Hambrecht*.

With due respect, I disagree.

The cited cases involve totally different factual and legal scenarios from those obtaining in the present case.

In *Metro Star*, the Petition for Review lodged before the Court in Division assails the Decision of the CIR's representative which denied Metro Star's motion for reconsideration **questioning the issuance of a Warrant of Distraint and/or Levy against it**. There was undeniably the filing of a Petition for Review within the reglementary period to assail the Decision involving the issuance of the Warrant of Distraint and/or Levy. Thus, the Court in Division therein properly assumed jurisdiction over the case.

A careful perusal of the Petition for Review filed by LANECO before the Court in Division reveals **that it is assailing the Decision of the CIR which denied its protest against the deficiency VAT** on the ground that the FAN has become final and executory in view of LANECO's failure to file a timely protest thereon.[8] LANECO's Petition for Review is categorical on the subject thereof:

"I. **PREFATORY STATEMENT**

1.1 This is a Petition for Review by appeal under Section 3 (a)(1), Rule 4 of the Revised Rules of Court of Tax Appeals [A.M. No. 05-11-07-CTA Nov. 22, 2005] in relation to Section 228 of the NIRC **assailing the Decision dated sometime September 2013** (the decision does not show any exact date when it was rendered) **of the Commissioner of the Bureau of Internal Revenue** [hereinafter referred to as BIR] **denying petitioner's protest/appeal against the assessment** of the alleged deficiency on the Value Added Tax. Xxx xxx xxx.

xxx xxx xxx

PRAYER

WHEREFORE, it is most respectfully prayed that pending the hearing of the merits of the petition the tax collection be SUSPENDED by the issuance of preliminary injunction. That after hearing on the merits, **the Decision of the respondent Commissioner be REVERSED and SET ASIDE** for being devoid of factual and legal basis.

Xxx xxx xxx." (Boldfacing supplied)

It is clear from the foregoing that LANECO assails the CIR's Decision which denied its protest to the FAN. Otherwise stated, while LANECO prayed for the suspension of any tax collection, **the main cause of action of LANECO's appeal is directed against the reversal and setting aside of the CIR's Decision**. There is nothing therein which would show that LANECO was invoking the jurisdiction of the CTA to act on "other matters", specifically **to cancel or set aside the Warrant of Distraint and/or Levy and Warrant of**

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[8] Annex B, Petition for Review, Division Docket, pp. 42 to 49.

Garnishment issued to LANECO on February 19, 2014 and which LANECO received on February 25, 2014.[9]

Since LANECO received the Warrant of Distraint and/or Levy and Warrant of Garnishment on February 25, 2014, LANECO had thirty (30) days from said date or until March 27, 2014 within which to assail said Warrant of Distraint and/or Levy and Warrant of Garnishment, consistent with the provisions of Section 7(a)(1) of RA No. 1125, as amended, and Section 3(a)(1) of Rule 4 of the RRCTA. **For LANECO's failure to timely take such a plain and appropriate remedy within the prescribed period, the Warrant of Distraint and/or Levy and Warrant of Garnishment have become final and executory. The CTA is therefore deprived of its jurisdiction to review the same under "other matters".**

In *Hambrecht*, although it was the CIR's Decision denying the protest which was the subject of Hambrecht's Petition for Review, the Court in Division directed the cancellation and withdrawal of the assessment on the ground that the **CIR's right to collect the final and executory assessment had already prescribed**. In the case at the bar, however, it is undisputed that the Warrant of Distraint and/or Levy and Warrant of Garnishment issued by the BIR for the collection of a final and executory assessment was made within the prescriptive period to collect.

In fine, I submit that the Court in Division correctly dismissed the Petition for Review filed by LANECO on the ground of lack of jurisdiction. As the Court in Division's jurisdiction to review the validity of the Warrant of Distraint and/or Levy and Warrant of Garnishment as "other matters" was not the subject of LANECO's Petition for Review, **aside from the fact that the CIR's right to collect a final and executory assessment has not prescribed**, the Court in Division could not have assumed jurisdiction over the same.

All told, I VOTE to DENY the Petition for Review filed by LANECO before the Court *En Banc* and AFFIRM the assailed Resolutions of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[9] Division Docket, pp. 153 to 154.