Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

LIGHT RAIL TRANSIT AUTHORITY, Petitioner,	**CTA EB No. 1325** (CTA Case No. 8891)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** *and* **RINGPIS-LIBAN,** *JJ.*
BUREAU OF INTERNAL REVENUE represented by the COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 05 2016 11:30 a.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a Petition for Review[1], filed by the Light Rail Transit Authority (LRTA) on July 9, 2015 assailing the Resolutions dated February 2, 2015[2] and May 19, 2015[3], respectively, rendered by the Court of Tax Appeal's (CTA) Third Division in CTA Case No. 8891, which dismissed LRTA's Petition for Review for lack of jurisdiction.

Petitioner LRTA is a government instrumentality under the Department of Transportation and Communications (DOTC), created under Executive Order (EO) No. 603, issued by then President

[1] CTA *En Banc* Rollo, pp. 7-22
[2] Division Docket, pp. 278-284
[3] *Ibid.*, pp. 308-312

Ferdinand E. Marcos, on July 12, 1980, as amended by EO No. 210, issued by then President Corazon C. Aquino, dated July 7, 1997. It may be served with pleadings, notices, orders, resolutions, decisions and other court processes through its Legal Department, Administration Building, LRTA Compound, Aurora Boulevard, Pasay City.[4]

Respondent Bureau of Internal Revenue (BIR) is the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. It is represented by the Commissioner of Internal Revenue (CIR) who holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

As culled from the records of the case, respondent issued a Preliminary Assessment Notice[5] (PAN) on December 8, 2008 against petitioner alleging unpaid deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) and withholding tax on VAT for calendar year (CY) 2003 in the amount of ₱3,521,915.61.

On January 21, 2009, petitioner filed a letter[6] dated December 22, 2008 with respondent protesting the said PAN.

On December 24, 2008, respondent issued a Formal Assessment Notice with Details of Discrepancies[7] (FAN) against petitioner for its alleged deficiency taxes in the amount of ₱3,555,982.19, inclusive of increments.

In response, petitioner protested the FAN *via* a letter dated January 7, 2009, reiterating its position in the previous protest letter dated December 22, 2008.[8]

On April 26, 2011, petitioner received a Final Decision on Disputed Assessment[9] (FDDA) dated April 1, 2011 denying its request for reinvestigation.

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[4] *See* paragraph 9, III. The Parties, Petition for Review, CTA *En Banc* Rollo, pp. 8-9
[5] Annex "D" of the Petition for Review, CTA *En Banc* Rollo, pp. 41-42
[6] Annex "E", *ibid.*, pp. 46-49
[7] Annex "F", *id.*, pp. 50-54
[8] As mentioned in the Final Decision on the Disputed Assessment dated April 1, 2011

On May 6, 2011 petitioner appealed the FDDA to then CIR Kim S. Jacinto-Henares, through a letter Re: Final Assessment Appeal[10] of even date, requesting reconsideration of the FDDA. Petitioner also re-submitted its supporting documents on July 7, 2011, through a letter Re: Final Assessment Appeal (Submission of Documents)[11].

However, on September 22, 2011, petitioner received a Preliminary Collection Letter[12] (PCL) dated September 20, 2011 from respondent's Regional District Office (RDO) No. 51, Revenue Region No. 8, demanding payment of its alleged tax deficiencies in the amount of ₱9,279,619.86 within ten (10) days thereof.

In reply, petitioner sent a letter Re: Preliminary Collection Letter dated 20 September 2011[13] on September 30, 2011 informing respondent's RDO No. 51, Revenue Region No. 8, that the matter is still the subject of a pending appeal with the CIR.

Then, on January 13, 2012, petitioner received a Final Notice Before Seizure[14] dated November 23, 2011 from respondent's RDO No. 51, Revenue Region No. 8, giving it a period of ten (10) days within which to settle its tax liabilities.

In a letter Re: Assessment Notice No. 33963-03-08-0605[15] dated February 3, 2012 filed with respondent's RDO No. 51, Revenue Region No. 8, petitioner reiterated that its case is still the subject of a pending appeal with the CIR. As such it will act on the matter accordingly, upon receipt of the latter's decision.

On May 17, 2012, a Warrant of Distraint and/or Levy[16] (WDL) dated March 5, 2012 was served upon petitioner.

On June 14, 2012, petitioner filed a letter[17] dated May 28, 2012, with respondent's RDO No. 51, Revenue Region No. 8, seeking

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[9] Annex "G" of the Petition for Review, CTA *En Banc* Rollo, pp. 55-58
[10] Annex "H", *ibid.*, p. 59
[11] Annex "I", *id.*, p. 60
[12] Annex "J", *id.*, p. 61
[13] Annex "K", *id.*, p. 62
[14] Annex "L", *id.*, p. 63
[15] Annex "M", *id.*, p. 65
[16] Annex "N", *id.*, p. 66
[17] Annex "O", id., p. 67

reconsideration of the WDL. Petitioner claims that it has been consistently filing with respondent its Monthly VAT Declaration, Monthly Remittance Return of VAT and other percentage taxes withheld, as evidenced by the copies of BIR Forms 2550M and 1600, respectively, as attached in the said latter.

In a letter[18] dated April 4, 2013, respondent's RDO No. 51, Revenue Region No. 8 granted petitioner's request and forwarded the docket of the case to its Revenue Officers for re-investigation of petitioner's tax deficiencies. Relative thereto, petitioner was further instructed to present all relevant documents within sixty (60) days for proper re-evaluation of its case.

Thereafter, on June 17, 2014, petitioner received a letter[19] from respondent's RDO No. 51, Revenue Region No. 8 dated June 9, 2014 informing petitioner that due to its failure to submit the pertinent relevant documents in support of its request, the findings in the FDDA dated April 1, 2011 is therefore upheld.

On August 12, 2014, petitioner received a letter[20] dated June 30, 2014 from the Regional Director of Revenue Region No. 8, informing petitioner that its case has already become final, executory and demandable.

As a result, petitioner elevated the matter on September 11, 2014 to the CTA *via* a Petition for Review[21].

After having been granted an extension of time within which to file an Answer, respondent instead filed a Motion to Dismiss[22] on November 5, 2014 praying that the Petition for Review be dismissed for lack of jurisdiction.

On January 14, 2015, petitioner filed a Comment/Opposition (To the Motion to Dismiss dated 4 November 2014)[23].

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[18] Annex "P", *id.*, p. 68
[19] Annex "R", *id.*, pp. 70-71
[20] Annex "S", *id.*, p. 72
[21] Division Docket, pp. 6-14
[22] *Ibid.*, pp. 254-260
[23] *Id.*, pp. 273-276

Accordingly, on February 2, 2015, the CTA Third Division promulgated the Resolution[24] being assailed in this wise:

> "**WHEREFORE**, the 'Motion to Dismiss,' is hereby **GRANTED.** Accordingly, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

On February 24, 2015, petitioner filed an Omnibus Motion (Motion for Reconsideration on the Decision dated 2 February 2015 and Motion to Quash Warrant of Distraint and Levy dated 12 February 2015)[25].

On May 19, 2015, the Court *a quo* promulgated the assailed Resolution[26], denying petitioner's Omnibus Motion for lack of merit.

Aggrieved, petitioner appealed the matter to the Court *En Banc* on July 9, 2015 *via* the instant Petition for Review[27]. Petitioner prays that the Court *En Banc* render judgment reversing the assailed Resolutions dated February 2, 2015 and May 19, 2015, respectively, rendered by the CTA Third Division and, that the assessment notices, collection letters, and all other actions enforcing the alleged deficiency taxes against petitioner for CY 2003 be declared null and void.

On August 3, 2015, petitioner's counsel filed a Notice of Change of Address[28] informing the court of the change of address of LRTA, Legal Department to LRTA Line 2 Santolan Depot, Marcos Highway, Santolan Pasig City. As such, it prayed that the change of address be noted and entered into the records.

In a Minute Resolution[29] dated August 4, 2015, the Court *En Banc* noted petitioner's counsel's change of address, thereby directing that all pleadings, notices, orders, decisions, resolutions and court processes be served to petitioner's counsel at its new address.

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[24] *Supra* No. 2
[25] Division Docket, pp. 292-298
[26] *Supra* No. 3
[27] *Supra* No. 1
[28] CTA *En Banc* Rollo, pp. 74-75
[29] *Ibid.*, p. 76

On August 4, 2015, the Court *En Banc* issued a Resolution[30] directing respondent to file its comment within ten (10) days from receipt thereof. However, as per Records Verification[31] dated September 17, 2015, respondent failed to file its comment.

Consequently, in a Resolution[32] dated October 15, 2015, the Court *En Banc* gave due course to the instant Petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

In compliance, petitioner filed its Memorandum (For Petitioner)[33] on December 23, 2015, while respondent failed to file his memorandum as per Records Verification[34] dated January 14, 2016. Thus, the Court *En Banc* deemed the present case submitted for decision *via* a Resolution[35] dated January 29, 2016.

The issues[36] raised in the instant Petition for Review are *whether the CTA Third Division has jurisdiction over the present case* and *whether the assessments issued by respondent have prescribed.*

Petitioner argues that the court *a quo* erroneously concluded that the Final Notice Before Seizure dated November 23, 2011 constitutes as respondent's final decision that is appealable before the CTA. Petitioner claims that the same cannot be considered as having finally disposed of the matter, since Ms. Corazon M. Montes, Officer-in-Charge of respondent's RDO No. 51, agreed to conduct a re-investigation of the case. Therefore, it is the letter dated June 30, 2014 issued by Regional Director Jonas DP Amora of BIR Revenue Region No. 8, which denied petitioner's request for reinvestigation, that should rightfully be considered as respondent's final decision. Moreover, petitioner asserts that respondent's right to assess its alleged deficiency taxes for CY 2003 has already prescribed since respondent only issued his FAN on December 24, 2008, which is more than four (4) years from the time petitioner paid its last VAT Return for CY 2003.

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[30] *Id.*, pp. 78-79
[31] *Id.*, p. 80
[32] *Id.*, pp. 82-83
[33] *Id.*, pp. 84-97
[34] *Id.*, p. 99
[35] *Id.*, pp. 101-102
[36] Paragraphs 32-33, VII. Issues, Petition for Review, CTA *En Banc* Rollo, p. 12

After due consideration, *We* find no merit in the instant Petition.

Settled is the rule that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. Perforce, jurisdiction refers to the power of a court to hear and determine a case – to ascertain whether or not a court has jurisdiction, the provisions of the law should be inquired into. The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[37] As such, Section 7(a) of Republic Act (RA) No. 1125[38], as further amended by RA No. 9282[39], enumerates the instances where the CTA may exercise its appellate jurisdiction, *viz*:

> "**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 relations 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 of action, in which case the inaction shall be deemed a denial;
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> *x x x." (Emphases Ours)*

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[37] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010
[38] "An Act Creating the Court of Tax Appeals"
[39] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And For Other Purposes

Evidently, it is the CIR's decision or inaction involving disputed assessments that is cognizable by this Court. The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals.[40]

More so, it has been previously interpreted that a "disputed assessment" arises where a taxpayer questions an assessment and asks for reconsideration or cancellation of the same.[41] It is precisely for this reason that, Section 228 of the NIRC of 1997, as amended, provides the manner upon which a taxpayer may question and appeal any deficiency tax assessment issued against it, *viz*:

> "**SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> *x x x*
>
> **Within a period to be prescribed by implementing rules and regulations**, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations**. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from**

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[40] Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et. al., G.R. No. 148380, December 9, 2005
[41] Commissioner of Internal Revenue vs. Leonardo Villa, et al., GR L-23988, January 2, 1968

> **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.**" *(Emphases Ours)*

Apropos thereto, the implementing rules and regulations of Revenue Regulations (RR) No. 12-99[42], specifically Section 3.1.5, clearly defines what is disputed assessment, *to wit*:

> "**3.1.5 Disputed Assessment.** — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. *x x x*
>
> *x x x*
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: **Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**
>
> *x x x." (Emphasis Ours)*

Clearly, upon receipt of the CIR's final decision on the disputed assessments, the taxpayer can file a petition for review with the CTA within thirty (30) days after receipt of a copy of such decision. However, the immediately quoted provision further provides that if the final decision was only rendered by the CIR's duly authorized representative,

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[42] "IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY", dated September 6, 1999

the taxpayer is given the option of whether *(1)* to elevate its protest to the Commissioner of Internal Revenue upon receipt of denial of protest by the authorized representative, or *(2)* to directly appeal such denial to the Court of Tax Appeals, again, both within thirty (30) days from receipt of the denial of the protest.[43]

Applying the foregoing in the present case, though the FDDA was issued on April 26, 2011, it was, however, issued only by the CIR's duly authorized representative – a BIR Regional Director. Pursuant to Section 3.1.5 of RR No. 12-99, petitioner is given the option to either elevate the decision to the CTA or, appeal the same to the CIR; both must be done within thirty (30) days from receipt of the denial of the protest. Accordingly, by choosing to appeal the FDDA to the Commissioner on May 6, 2011, the FDDA issued by the BIR Regional Director cannot yet be considered as final, executory and demandable. A table of the antecedent material events is provided hereafter for ease of reference, *to wit*:

DATE	MATERIAL EVENT
December 8, 2008	petitioner received a PAN[44] issued by Regional Director Ma. Nieva A. Guerrero, on behalf of then CIR Sixto S. Esquivas IV
January 21, 2009	petitioner filed a letter of protest[45]
December 24, 2008	a FAN[46] was issued by Regional Director Ma. Nieva A. Guerrero on behalf of then CIR Sixto S. Esquivas IV
January 7, 2009	petitioner protested the FAN[47]
April 26, 2011	petitioner received a FDDA[48] issued by Regional Director Jaime B. Santiago, on behalf of then CIR Kim S. Jacinto-Henares
May 6, 2011	petitioner appealed the FDDA to the CIR through a letter Re: Final Assessment Appeal[49]
May 26, 2011	end of the 30 days within which petitioner may elevate the matter with the CTA
September 11, 2014	petitioner filed a Petition for Review[50] with the CTA

[43] *See* Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB Case No. 44, May 10, 2005
[44] *Supra* No. 5
[45] *Supra* No. 6
[46] *Supra* No. 7
[47] *Supra* No. 8
[48] *Supra* No. 9
[49] *Supra* No. 10
[50] *Supra* No. 21

Now, the next logical question would be what are the periods applicable when the taxpayer opts to elevate its protest to the CIR since Section 3.1.5 of RR No. 12-99 is silent on the matter.

We find the case of *COMMISSIONER OF INTERNAL REVENUE VS. SARANGANI RESOURCES CORPORATION*[51] instructive on the issue at hand, *viz*:

> **"It must be stressed that Section 228 of the NIRC of 1997, as amended, provides only for one 180-day period for the CIR or her authorized representative to decide the protest. Thus, RR No. 12-99, which implements Section 228, does not provide for a fresh or separate 180-day period for the CIR to decide the appealed decision of her authorized representative.**
>
> A plain reading of Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99 reveals that there is only one '180-day period' which shall be counted from the date of submission of the relevant supporting documents. The date of submission of the relevant supporting documents, as expressly provided in Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99, shall be within sixty (60) days from the filing of the protest. **There is no mention in either Section 228 of the NIRC of 1997, as amended, nor in Section 3.1.5 of RR No. 12-99, that upon appeal to the CIR of the decision of her duly authorized representative, the taxpayer may submit additional documents or that the taxpayer is given a fresh period of 60 days to submit such additional supporting documents.**
>
> As such, respondent Sarangani Resources erred in counting a new 180-day period from October 15, 2009 for the CIR to decide on the appealed decision of her authorized representative. When the decision of the CIR's authorized representative was appealed to the CIR, the running of the 180-day period should still be counted from March 19, 2009, the date when respondent submitted the relevant supporting documents in support of its protest.

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[51] CTA EB No. 1098, April 28, 2015

> Considering that the 180-day period expired on September 15, 2009, pursuant to Section 228 of the NIRC of 1997, as amended, respondent Sarangani Resources had thirty (30) days, or until October 15, 2009 to appeal to the CTA. Records show that respondent filed the Petition for Review in CTA Case No. 8105 only on May 13, 2010, or two hundred and ten (210) days beyond the last day to file the petition for review. Since the Petition for Review with the CTA was filed way beyond the 30-day reglementary period, the CTA Special First Division had no jurisdiction to entertain the Petition for Review in CTA Case No. 8105, and should thus have been dismissed for lack of jurisdiction." *(Emphases Ours)*

Verily, while RR No. 12-99, as amended, allows that the final decision of the CIR's duly authorized representative be appealed to the CIR, such provision may only be construed in a manner consistent with Section 228 of the NIRC of 1997, as amended. It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law; and that it be not in contradiction to, but in conformity with, the standards prescribed by law.[52]

Going back to the present case, the thirty (30) days within which to elevate to this Court the final decision of the CIR or his duly authorized representative under Section 228 of the NIRC of 1997, as amended, is still observed and not, in anyway, extended or renewed. Considering that the FDDA was received by petitioner on April 26, 2011, petitioner had until May 26, 2011 within which to elevate the case to this Court. By belatedly filing its Petition for Review on September 11, 2014, respondent's Assessment Notice No. 33963-03-08-0605 for CY 2003 already became final, demandable and executory.

With much emphasis, *We* again stress that while the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdictional. "If a statutory remedy provides as a condition precedent

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[52] Commissioner of Customs and the District Collector of the Port of Subic vs. Hypermix Feeds Corporation, G.R. No. 179579, February 1, 2012

that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss".[53]

Hence, in view of the foregoing, this Court is deprived of jurisdiction to rule on the fallibility, much less belabor on the substantive validity, of the subject assessments.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated February 2, 2015 and May 19, 2015, respectively, in CTA Case No. 8891 are both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[53] Ker and Company, Ltd. vs. The Court of Tax Appeals and the Collector of Internal Revenue, G.R. No. L-12396, January 31, 1962, *citing* Callahan vs. Chespeake & Ohio, 407 Supp. 323, mentioned on p. 175, Moran's Rules of Court, Vol. 1, 1952 Ed.

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 with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LIGHT RAIL TRANSIT AUTHORITY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1325
(CTA Case No. 8891)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, *and*
Ringpis-Liban, *JJ.*

Promulgated:
OCT 05 2016 11:30 a.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in denying the Petition for Review filed by Light Rail Transit Authority (LRTA) on July 9, 2015 which assails the Court in Division's Resolutions dated February 25, 2015 and May 19, 2015.

Records reveal that the Court in Division dismissed the Petition for Review filed therein by LRTA for lack of jurisdiction. The Court in Division ruled that the Final Notice Before Seizure (FNBS) dated November 23, 2011 issued by Corazon M. Montes, OIC-Revenue District Officer of Revenue District Office No. 51, constitutes as the final decision of respondent Commissioner of Internal Revenue (CIR) that is appealable before the Court in Division. As found by the Court in Division, LRTA received the FNBS on January 13, 2012, thus, it had thirty (30) days from said date to appeal the same before the Court in Division. Since LRTA's Petition for Review was filed with the

Court in Division only on September 11, 2014, or way beyond the thirty-day period to appeal, thus, the Court in Division ruled that the assessment had already attained finality.

On the other hand, in dismissing LRTA's present Petition for Review, the *ponencia* holds that the thirty-day period to file an appeal with the Court in Division should be reckoned from April 26, 2011, the date when LRTA received the Final Decision on Disputed Assessment (FDDA) dated April 1, 2011 issued by Jaime B. Santiago, Regional Director of Revenue Region No. 8.

For ease of reference, the following are the material dates of the case:

December 8, 2008	LRTA received Preliminary Assessment Notice (PAN) dated December 8, 2000 assessing it for unpaid deficiency income tax, VAT, Withholding Tax on Compensation, Expanded Withholding Tax and Withholding Tax on VAT for calendar year 2003, issued by the OIC-Regional Director of Revenue Region No. 8
January 21, 2009	LRTA filed with the Revenue Region No. 8 its Reply to the PAN dated December 22, 2008
December 24, 2008	LRTA received the Formal Assessment Notice (FAN) dated December 24, 2008 issued by the OIC-Regional Director of Revenue Region No. 8
January 21, 2009	LRTA filed a letter-protest dated January 7, 2009 against FAN, addressed to the CIR
April 26, 2011	**LRTA received the FDDA dated April 1, 2011 denying LRTA's request for reinvestigation, issued by the OIC-Regional Director of Revenue Region No. 8**
May 6, 2011	**LRTA appealed the FDDA to then CIR Kim S. Jacinto-Henares**
September 22, 2011	LRTA received a Preliminary Collection Letter dated September 20, 2011, issued by the OIC-Revenue District Officer of Revenue District Office No. 51
September 30, 2011	LRTA sent a letter informing the OIC-Revenue District Officer of Revenue District Office No. 51 that a matter is still the subject of a pending appeal with the CIR
January 13, 2012	LRTA received the FNBS dated November 23, 2011 issued by the OIC-Revenue District Officer of Revenue District Office No. 51
February 3, 2012	LRTA filed a letter addressed to the OIC-Revenue District Officer of Revenue District Office No. 51 reiterating the filing on May 6, 2011 of its Letter to then CIR Kim S. Jacinto-Henares
May 17, 2012	**A Warrant of Distraint and/or Levy (WDL)**

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	issued by the OIC-Revenue District Officer of Revenue District Office No. 51 was served upon LRTA.
June 14, 2012	LRTA filed a letter dated May 28, 2012 addressed to the OIC-Revenue District Officer of Revenue District Office No. 51 seeking reconsideration of the WDL
April 4, 2013	LRTA received a letter from OIC-Revenue District Officer of Revenue District Office No. 51 granting its request for reinvestigation of its tax deficiencies
June 17, 2014	LRTA received a letter from OIC-Revenue District Officer of Revenue District Office No. 51 informing LRTA that due to its failure to submit the pertinent relevant documents in support of its request, the findings in the FDDA dated April 1, 2011 are upheld
August 12, 2014	LRTA received a letter from the Regional Director of Revenue Region No. 8 informing LRTA that its case has already become final, executory and demandable
September 11, 2014	**LRTA appealed filed a Petition for Review before the Court in Division**

Based on the foregoing, the Court in Division aptly dismissed the Petition for Review filed by LRTA, albeit in my view, the dismissal should have been based **on the ground that the Petition for Review was either prematurely filed or time-barred**.

Section 3.1.5 of Revenue Regulations (RR) No. 12-99, implementing Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, reads:

> "3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
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> **In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**" (Emphasis supplied)

The decision of the CIR or his duly authorized representative is appealable to this Court within thirty (30) days from receipt thereof by the taxpayer; otherwise, the assessment shall become final, executory and demandable. **Section 3.1.5 of RR No. 12-99 also categorically provides that the decision of the authorized representative will not attain finality if the taxpayer appeals the same to the CIR who shall then be required to decide the protest himself.**

In the present case, LRTA alleges in its Petitions for Review respectively filed before the Court in Division and the Court *En Banc* that after receiving the FDDA dated April 1, 2011, issued by the OIC-Regional Director of Revenue Region No. 8, on April 26, 2011, LRTA filed a Final Assessment Appeal with the office of the then CIR Kim S. Jacinto-Henares on May 6, 2011, which was well within the thirty-day period specified in Section 3.5.1 of RR No. 12-99. To support its allegation, LRTA attached a copy of said Final Assessment Appeal to the Petitions for Review filed with the Court in Division and the Court *En Banc*. In the absence of any evidence to the contrary and considering that the CIR failed to specifically deny this material averment of LRTA, such allegation is deemed admitted under Sections 8 and 11 of Rule 8 of the Revised Rules of Court.[1]

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[1] SECTION 8. How to Contest Such Documents. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.
SECTION 11. Allegations Not Specifically Denied Deemed Admitted. — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied.

Since no final decision has been rendered by the CIR on LRTA's appeal of the FDDA issued by the OIC-Regional Director of Revenue Region No. 8, LRTA's appeal to the Court of Tax Appeals (CTA) was premature. Otherwise stated, there being no CIR decision on LRTA's appeal to speak of, LRTA could not yet invoke the appellate jurisdiction of the CTA pursuant to Section 7 of Republic Act (RA) No. 1125 as amended by RA No. 9282. Indeed, the premature invocation of the CTA's intervention is fatal to LRTA's cause of action.

On the other hand, even assuming *arguendo* that the WDL issued by the OIC-Revenue District Officer of Revenue District Office No. 51 may be regarded as the CIR's final decision on LRTA's appeal of the FDDA, the thirty-day period to file an appeal before the Court in Division should have been counted from LRTA's receipt of the WDL on May 17, 2012. Accordingly, a Petition for Review questioning the validity of WDL should have been filed with the Court in Division not later than **June 16, 2012**.

To be sure, the issue on the validity of the issuance of the WDL falls within the ambit of other matters arising under the NIRC or other laws administered by the BIR. Thus, in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[2] the Supreme Court clarified that the issue on the validity of a warrant of distraint and levy falls within the "other matters" clause of Section 7 (1) of RA No. 1125, as amended by RA No. 9282, which is appealable to the CTA, *viz.*:

> "We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:
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> Xxx xxx xxx.
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> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." (Emphasis supplied)

Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath.

[2] G.R. No. 162852, December 16, 2004.

In addition, LRTA's motion seeking for reconsideration of the WDL filed with the Revenue District Office No. 51 did not toll the thirty-day period to appeal the WDL to this Court. Consequently, the thirty-day period to appeal continued to run despite the filing by petitioner of said motion for reconsideration and despite the subsequent exchanges of communication between LRTA and Revenue District Office No. 51. Under this situation, since the Petition for Review was filed by LRTA only on **September 11, 2014** which was way beyond the thirty-day period to appeal to this Court, the WDL has become final and executory.

On the basis of the foregoing disquisition, I vote to DENY the Petition for Review filed by LRTA before the Court *En Banc* for lack of merit. The Petition for Review filed by LRTA with the Court in Division should appropriately be dismissed based on the aforestated grounds.

ROMAN G. DEL ROSARIO
Presiding Justice