REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

FILAIRCO, INC., doing business under the name and style TRANE PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER INTERNAL REVENUE,
Respondent.

CTA Case No. 10862

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

JUL 18 2023; 1:50PM

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RESOLUTION

By Resolution dated March 10, 2023,[1] petitioner's Motion for Judgment on the Pleadings was granted. We found: (1) based on the *allegations* in petitioner's Petition for Review, we have jurisdiction over CTA Case No. 10862; and (2) based on respondent's admission in his Answer, the latter violated petitioner's right to due process on assessment. Specifically, petitioner received the Bureau of Internal Revenue (BIR)'s Preliminary Assessment on January 10, 2017. Section 228 of the 1997 National Internal Revenue Code, as amended, as implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, guarantees a period of fifteen (15) days from receipt of said PAN on January 10, 2017, or until January 25, 2017 to file a reply or response thereto. Therefore, the BIR's issuance of the FAN on January 13, 2017, or barely three (3) days from petitioner's receipt of the PAN, is offensive to its right to due process. Ultimately, we decreed:

> **WHEREFORE**, petitioner's Motion for Judgment on the Pleadings, filed on November 10, 2022, is **GRANTED**. Accordingly, Assessment Nos. IT-ELA78370-13-17-371, VAT-ELA78370-13-17-371, WE-ELA78370-13-17-371, WF-ELA78370-13-17-371, DS-ELA78370-13-17-371, IE-ELA78370-13-17-371 and MC- ELA78370-13-17-371,

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[1] Docket, pp. 653-661.

Formal Assessment Notice dated January 13, 2017, Final Decisions on Disputed Assessment dated April 7, 2017 and January 26, 2018, Final Demand Before Suit dated March 8, 2021, and Decision dated March 31, 2022, are **CANCELLED** and **SET ASIDE**.

Respondent, his agents, or any persons acting in his behalf are **ENJOINED** from enforcing the collection of taxes under the above tax assessments against petitioner.

SO ORDERED.

On April 5, 2023, respondent posted his Motion for Reconsideration (of the Resolution dated 10 March 2023),[2] insisting that there was no valid protest filed by petitioner against the FLD/FAN, as recognized in then Regional Director Glen A. Geraldino (RD Geraldino)'s Letter dated April 7, 2017.

Respondent further asserts that the RD Geraldino's Final Decision on Disputed Assessment (FDDA) dated January 26, 2018 attained finality because petitioner failed to elevate the same within thirty (30) days from receipt thereof, either with respondent, or the Court of Tax Appeals (CTA). Therefore, re-examination to validate the correctness thereof is not permitted.

For these reasons, respondent moves for the dismissal of CTA Case No. 10862, for lack of jurisdiction.

Through its Comment/Opposition Re: Motion for Reconsideration (of the Resolution dated 10 March 2023), filed through accredited courier on June 5, 2023, petitioner ripostes that: (1) RD Geraldino's Letter dated April 7, 2017 is equivalent of an FDDA, appealable to the CTA, or with respondent; (2) the Court has jurisdiction over CTA Case No. 10862; and (3) the FDDA dated January 26, 2018 may not attain finality because a void assessment bears no valid fruit.

The Motion lacks merit.

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2 *Id.* at pp. 662-674.

One. Respondent's hypothesis that we have no jurisdiction over CTA Case No. 10862, because petitioner failed to challenge RD Geraldino's "FDDA" dated January 26, 2018, either with us, or with respondent, should automatically be overlooked. As commanded by *Malabanan v. Republic of the Philippines:*[3]

> The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred. **Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.**

Prescinding from *Malabanan,* the test of jurisdiction over the subject matter is the allegations in petitioner's Petition for Review. Such pleading demonstrates presence of our jurisdiction over CTA Case No. 10862. The assailed Resolution discoursed:

> As alleged in its Petition for Review, the BIR's FAN was received by petitioner on January 27, 2017. Counting thirty (30) days therefrom, it had until February 27, 2017 to file an administrative protest thereon; thus, its protest to the FAN was timely filed through registered mail on February 27, 2017. On April 21, 2017, petitioner received a letter dated April 7, 2017 from the BIR Regional Director (RD), informing it that the tax assessments had become final, executory and demandable, which it treated as the latter's FDDA. Counting another thirty (30) days from April 21, 2017, petitioner had until May 22, 2017 to file an administrative appeal with respondent; hence, petitioner seasonably appealed with respondent on May 22, 2017. On April 19, 2022, petitioner received respondent's Decision dated March 31, 2022, stating that it was the latter's final decision on the matter. Counting thirty (30) days from April 19, 2022, petitioner had until May 19, 2022 to seek judicial recourse; precisely, its Petition for Review was timely filed on May 19, 2022, vesting us with jurisdiction over CTA Case No. 10862.[4]

Two. Petitioner correctly pointed out that RD Geraldino's Letter dated April 7, 2017 is tantamount to the latter's FDDA, appealable

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[3] G.R. No. 201821, September 19, 2018. Boldfacing supplied.
[4] Pages 4-5, assailed Resolution. Citations omitted.

before respondent or the CTA in Division. As meticulously elucidated in the assailed Resolution:

> We are cognizant of BIR RD's "Final Decision on Disputed Assessment" dated May 22, 2017, and received by petitioner on May 31, 2017. Yet, treading over the tenor of the BIR RD's earlier letter dated April 7, 2017, and received by petitioner on April 21, 2017, the latter may not be blamed from treating said earlier letter as the BIR RD's final decision on its administrative protest. To be precise, such earlier letter contained the following paragraph:
>
>> Since you failed to file a valid administrative protest against our FAN within thirty (30) days from date of receipt thereof, **the assessment** is now **final, executory and demandable** pursuant to RR No. 12-99, as amended by RR No. 18-2013. Hence, **the entire docket your case will be forwarded to the Chief, Collection Division of this Region for enforcement of collection through summary remedies provided by law.**
>
> ...
>
> Catena of cases has consistently considered letters answering an administrative protest, containing a statement regarding resort to the legal remedies for the collection of taxes as being indicative of the final nature of the BIR's determination of a taxpayer's tax liability. Surely, the BIR RD's declaration that the tax assessments became final and executory, coupled with his indorsement for the collection of the assessed taxes, signifies a characterization of finality of the latter's action on petitioner's administrative protest. For that reason, petitioner challenged the BIR RD's letter it received on April 21, 2017 through an administrative appeal before respondent, filed on May 22, 2017, and rightfully so.[5]

WHEREFORE, respondent's Motion for Reconsideration (of the Resolution dated 10 March 2023), posted on April 5, 2023, is **DENIED**, for lack of merit. The assailed Resolution dated March 10, 2023, is **AFFIRMED**.

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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5 Page 5, assailed Resolution. Boldfacing in the original. Citations omitted.