REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HR MALL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9981

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

NOV 12 2021
12:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on December 6, 2018, prays that the alleged assessments against petitioner in the aggregate amount of ₱78,879,339.07 for taxable year 2014, be declared null and void.[1]

THE PARTIES

Petitioner HR Mall, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at U-1703, 17F Panorama Bldg., 34th St., cor. Lane A. Bonifacio Global City, Fort Bonifacio, Taguig City.[2]

[1] Summary of the Case, Pre-Trial Order dated June 10, 2019, Docket, p. 232.
[2] Par. 8, *Petition for Review* vis-à-vis Par. 3, *Answer*, Docket, pp. 17 and 155, respectively.

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. As Commissioner of Internal Revenue, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR), with office address at the 5th Floor, BIR National Office Building, NIA Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On May 25, 2016, the BIR, through its authorized representative, served petitioner the *Letter of Authority* (LOA) SN eLA201200036761, authorizing Revenue Officer (RO) Raquel Hombrebueno / Group Supervisor Celestino Viernes of Revenue District No. 044-Taguig-Pateros, to examine the books of accounts and other accounting records of petitioner, for all internal revenue taxes for the period form January 1, 2014 to December 31, 2014.[4]

Thereafter, on November 17, 2017, petitioner received the *Preliminary Assessment Notice* (PAN) and *Details of Discrepancies*, both dated November 16, 2017 issued by Mr. Glen A. Geraldino, Regional Director of Revenue Region No. 8 – Makati,[5] informing petitioner that after investigation, there has been found due from the latter deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and final withholding tax (FWT), for taxable year 2014.

In response, petitioner, through its Finance Manager, Mr. Jhun Ramirez, sent the letter dated November 28, 2017,[6] acknowledging its receipt of the PAN, and requesting: (1) for it to be provided with the necessary details and calculations as to how the BIR derived the numbers in the preliminary assessment, since there was no examination done in petitioner's premises; and (2) for another period of forty-five (45) days upon receipt of the supporting calculations.

[3] Par. 9, *Petition for Review* vis-à-vis Par. 3, *Answer*, Docket, pp. 17 and 155, respectively.
[4] Par. 10, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 17 and 155, respectively; Exhibits "P-4" and "P-4-A", Docket, p. 38.
[5] Exhibits "P-5", "P-5-A", and "R-3", "R-3-a", "R-3-b" and "R-3-c", BIR Records, pp. 330 to 334; cf: As to the existence and issuance of the PAN with *Details of Discrepancies* dated November 16, 2017, refer to Par. 4, *Answer*, Docket, p. 155.
[6] Exhibit "P-6", BIR Records, *unpaginated*.

Unfortunately, however, petitioner's letter dated November 28, 2017 was disregarded by the BIR. Instead of responding to the letter, it issued the *Formal Assessment Notice* (FAN) dated December 15, 2017 which petitioner received on December 20, 2017.[7] The said FAN enclosed four (4) *Assessment Notices* and a *Details of Discrepancies*, all dated December 15, 2017, which were mere reiterations of the PAN, save the interests imposed therein which covered the period from January 1, 2015 until December 28, 2017.[8]

On January 15, 2018, petitioner, again through Mr. Jhun Ramirez, filed with the BIR the letter of even date,[9] acknowledging its receipt of the FAN on December 20, 2017; alleging that the FAN lacks factual and legal basis; and requesting for a period of thirty (30) days within which to submit its records against the BIR's findings.

On January 28, 2018, petitioner filed the *Supplemental Protest* dated January 25, 2018, with the BIR Regional Director, Revenue Region No. 8, Makati, against the FAN for year 2014.[10]

Sometime in the 2nd week of March 2018, petitioner received the letter dated February 27, 2018 from the BIR, denying its request for a 30-day extension to submit a response,[11] and further stating that the assessment mentioned in the FAN became final, executory and demandable, for its failure to file a valid protest within the time prescribed by Section 3.1.4 of Revenue Regulations (RR) No. 18-2013.[12]

On July 9, 2018, petitioner received the Preliminary Collection Letter (PCL) dated July 2, 2018 from the Collection Division of the BIR, seeking for the collection of taxes amounting to ₱78,879,339.07,

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[7] Par. 15, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 19 and 155, respectively; Exhibits "P-2" and "R-4", BIR Records, pp. 351 to 358.

[8] Par. 16, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 19 and 155, respectively.

[9] Exhibits "P-7", "P-7-A", "P-7-B", and "R-5, BIR Records, pp. 366 to 367; cf: As to the fact of filing of petitioner's letter dated January 15, 2018 with the BIR on the same date, refer to Par. 4, *Answer*, Docket, p. 155.

[10] Exhibits "P-8" and "R-6", BIR Records, pp. 369 to 374. While under par. I-a, Joint Stipulation of Facts, *Compliance (To the Order dated May 9, 2019)* (Docket, p. 223) is to the effect that the date of receipt is "January 28, 2018", the said Exhibits states otherwise, and considering that the latter date fell on a Sunday.

[11] Par. 19, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 19 and 155, respectively.

[12] Exhibits "P-9", "R-7" and "R-7-a", BIR Records, p. 375.

inclusive of interests.[13] As a response, petitioner went to the BIR office to personally discuss the matter with them. Resultantly, petitioner was advised to request for a reinvestigation. Hence, petitioner sent a *Reply-Letter* on July 13, 2018 re the PCL, and requested a 10-day extension for the filing of its *Request for Reinvestigation*.[14]

On July 16, 2018, petitioner filed a *Letter for Reinvestigation* with the BIR Regional Director, Revenue Region No. 8, Makati, assailing/questioning the FAN for year 2014, as well as the PCL.[15]

The following day or on July 17, 2018, however, petitioner received the *Final Notice Before Seizure* (FNBS) dated July 12, 2018 from the Chief of Collection Division of the BIR, giving the former the last opportunity to make the necessary settlement of the amount within ten (10) days from receipt of the notice; otherwise, a *Warrant of Distraint and/or Levy and Garnishment* is forthcoming.[16]

On July 20, 2018, petitioner filed another *Letter of Reinvestigation* with the BIR Regional Director, Revenue Region No. 8, Makati, assailing/questioning the FAN for year 2014, as well as the PCL and FNBS.[17]

On September 12, 2018, petitioner received the letter dated August 16, 2018 issued by Chief Alice Gonzales,[18] stating, *inter alia*, that considering that petitioner failed to file a valid protest letter within the time prescribed, the same is considered void and without effect.

On November 15, 2018, petitioner received the *Warrant of Distraint and/or Levy* dated November 6, 2018, wherein respondent ordered the BIR to distrain the goods, chattels or effects, and other

[13] Par. 23, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 20 and 155, respectively; Exhibits "P-10" and "R-8", BIR Records, p. 875.
[14] Par. 24, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 20 and 155, respectively; Exhibit "P-11", BIR Records, p. 879.
[15] Par, I-b, Joint Stipulation of Facts, *Compliance (To the Order dated May 9, 2019)*, Docket, p. 223; Par. 25, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 20 and 155, respectively; Exhibits "P-12" and "P-12-A", BIR Records, pp. 868 to 870.
[16] Par. 26, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 21 and 155, respectively; Exhibits "P-13" and "R-9", BIR Records, p. 880.
[17] Par, I-c, Joint Stipulation of Facts, *Compliance (To the Order dated May 9, 2019)*, Docket, p. 223; Par. 27, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 21 and 155, respectively; Exhibits "P-14" and "P-14-A", BIR Records, pp. 627 to 637.
[18] Exhibit "P-15", Docket, p. 138; BIR Records (Exhibit "R-1"), p. 881.

personal property, and levy upon the real property and interest thereon of petitioner to satisfy the alleged tax assessments in the aggregate amount of ₱78,879,339.07.[19]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review with Motion to Suspend Collection of Taxes* on December 6, 2018.[20]

The hearing for petitioner's *Motion to Suspend Collection of Taxes* was set and held on January 23, 2019. However, considering that petitioner is not willing to post bond, the same was reset to March 4, 2019.[21]

Respondent posted his *Answer* on January 31, 2019,[22] interposing certain special and affirmative defenses, to wit: (1) since the subject FAN has already become final, executory and demandable, this Court has no jurisdiction to entertain the instant petition; (2) assuming this Court has jurisdiction, respondent has fully complied with the due process requirements mandated under the law; (3) the LOA No. eLA201200036761 dated May 11, 2016 was validly issued by respondent to petitioner for examination of all its internal revenue taxes for taxable year 2014; (4) the issuance of the subject FAN has not yet prescribed; and (5) the assessed deficiency taxes are *prima facie* correct and made in good faith, and petitioner has the duty of proving otherwise.

The pre-trial conference was initially set on March 4, 2019.[23] Petitioner's *Pre-Trial Brief* was filed on February 27, 2019,[24] while *Respondent's Pre-Trial Brief* was submitted on February 28, 2019.[25]

On March 4, 2019, at the scheduled pre-trial conference and hearing of petitioner's *Motion to Suspend Collection of Taxes*, the said *Motion* was deemed withdrawn, upon oral motion of withdrawal

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[19] Par. 2, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 15 and 155, respectively; Par. 3, *Petition for Review* vis-à-vis Par. 2, *Answer*, Docket, pp. 16 and 155, respectively; Par. 29, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 21 and 155, respectively; Exhibit "P-3", Docket, pp. 36 to 37; Exhibit "R-10", Docket, pp. 110 to 111.
[20] Docket, pp. 14 to 33.
[21] Minutes of the hearing held on, and Order dated, January 23, 2019, Docket, pp. 152 to 153.
[22] Docket, pp. 155 to 162.
[23] *Notice of Pre-Trial Conference* dated February 14, 2019, Docket, pp. 164 to 165.
[24] Docket, pp. 166 to 172.
[25] Docket, pp. 183 to 185.

of the counsels of petitioner.[26] In the same hearing, the parties were ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation proceedings on March 25, 2019.[27] On March 29, 2019, the PMC-CTA submitted the *"No Agreement to Mediate"*,[28] which was noted by the Court in the Resolution dated April 3, 2019.[29] In the same Resolution, the pre-trial conference was set anew on May 9, 2019.[30] At the said pre-trial conference, by agreement of the parties, counsel for petitioner was given twenty (20) days therefrom to submit the parties *Joint Stipulation of Facts & Issues.*[31]

On May 29, 2019, the parties presented their *Compliance (To the Order dated May 9, 2019)*,[32] stating therein, *inter alia*, their joint stipulation of facts and issues, which were approved and adopted in the Pre-Trial Order dated June 10, 2019,[33] thereby deeming the termination of the pre-trial.

Respondent transmitted the *BIR Records* for the case on June 13, 2019.[34]

Trial proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Peter M. Jimenez,[35] petitioner's CFO and VP of Operations; and (2) Mr. Maurito C. Tarobal,[36] the Court-commissioned Independent Certified Public Accountant (ICPA).[37]

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[26] Minutes of the hearing held on, and Order dated, March 4, 2019, Docket, pp. 186 to 187.
[27] *Id.*; Refer also to the Resolution dated March 4, 2019, Docket, p. 190.
[28] Docket, p. 191.
[29] Docket, p. 195.
[30] Resolution dated April 3, 2019, Docket, p. 195.
[31] Minutes of the hearing held on, and Order dated, May 9, 2019, Docket, pp. 196 and 222, respectively.
[32] Docket, pp. 223 to 229.
[33] Docket, pp. 232 to 236.
[34] Letter dated May 23, 2019 of the Mr. Alberto R. Bomediano, Jr., Chief, Legal Division of the BIR, Docket, p. 237.
[35] Exhibit "P-21", Docket, pp. 245 to 257; Minutes of the hearing held on, and Order dated, June 26, 2019, Docket, pp. 259 to 260; Minutes of the hearing held on, and Order dated, July 18, 2019, Docket, pp. 269 to 271.
[36] Exhibit "P-24", Docket, pp. 293 to 305; Minutes of the hearing held on, and Order dated, September 9, 2019, Docket, pp. 306 to 307; Minutes of the hearing held on, and Order dated, September 23, 2019, Docket, pp. 324 to 325.
[37] *Oath of Commission* dated July 18, 2019, Docket, p. 268; Minutes of the hearing held on, and Order dated, July 18, 2019, Docket, pp. 269 to 271.

On September 18, 2019, the ICPA filed its *Compliance (Submission of Modified Audit Report to Conform to the Marking of Exhibits Mandated by CTA Circular No. 01-2013.*[38]

Petitioner posted its *Motion for the Corrections of Markings of Exhibits and Formal Offer of Documentary Exhibits* on September 30, 2019.[39] Respondent, however, failed to file his comment thereon.[40] In the Resolution dated November 21, 2019,[41] the Court granted the *Motion for the Correction of Markings of Exhibits* of petitioner, and noted the corrections mentioned therein. In the same Resolution, the Court admitted its exhibits, *except* for Exhibits "P-22" and "P-22-A", for not being found in the records of the case; and Exhibits "P-23-L-1" to "P-23-1261", for failure to present the originals for comparison.

Respondent likewise presented his documentary and testimonial evidence. He proffered the testimony of RO Gene G. Etorma.[42]

Respondent posted his *Formal Offer of Evidence* on June 3, 2020.[43] Petitioner then posted its *Comment/Opposition on Respondent's Formal Offer of Evidence* on June 22, 2020.[44] In the Resolution dated July 14, 2020,[45] the Court admitted all the exhibits formally offered by respondent.

Petitioner's Memorandum was posted on November 19, 2020.[46] Respondent, however, failed to file his memorandum.[47]

On January 8, 2021, this case was submitted for decision.[48]

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[38] Docket, pp. 308 to 310. N.B.: Considering that the documents examined by ICPA was not marked in accordance with the Rules of the Court of Tax Appeals, the continuation of his testimony was deferred and directed to submit, a modified ICPA Report, both in hard copy and soft copy contained in a USB. Refer to the Minutes of the hearing held on, and Order dated, September 9, 2019, Docket, pp. 306 to 307; and to Exhibits "P-23" and "P-23-A", ICPA Report.
[39] Docket, pp. 326 to 338.
[40] Records Verification dated October 17, 2019 issued by the Judicial Records Division of this Court, Docket, p. 340.
[41] Resolution dated November 21, 2019, Docket, pp. 342 to 344.
[42] Exhibit "R-11", Docket, pp. 350 to 361; Minutes of the hearing held on, and Order dated, March 2, 2020, Docket, pp. 395 to 396.
[43] Docket, pp. 401 to 406.
[44] Docket, pp. 409 to 412.
[45] Docket, pp. 415 to 416.
[46] Docket, pp. 417 to 437.
[47] Records Verification dated December 10, 2020 issued by the Judicial Records Division of this Court, Docket, p. 439.
[48] Resolution dated January 8, 2021, Docket, p. 440.

THE ISSUES RAISED BY THE PARTIES

The following issues were stipulated by the parties for the Court's resolution, to wit:

> "1. Whether or not the issuance of the subject Formal Assessment Notice dated 15 December 2017 and Warrant of Distraint and/or Levy dated 6 November 2018 are *null and void*.
>
> 2. Whether or not Petitioner timely filed a valid letter protest against the FAN for the year 2014.
>
> 3. Whether or not the FAN has already become final, executory and collectible.
>
> 4. Whether or not Petitioner is liable to pay the assessed deficiency taxes for year 2014 in the total aggregate amount of P78,879,339.07."[49]

Petitioner's arguments:

Petitioner claims that the period to assess for all its internal revenue taxes for the most part of the taxable year 2014 has already prescribed; that the tax assessments made on it are null and void, for lack of a valid LOA, and for failure to state the facts and the law on which the assessment is made; and the *Warrant of Distraint and/or Levy* dated November 6, 2018 is null and void.

Respondent's counter-arguments:

Respondent contends that since the subject FAN has already become final, executory and demandable, this Court has no jurisdiction to entertain the instant petition; that assuming this Court has jurisdiction, respondent has fully complied with the due process requirements mandated under the law; that the LOA No. eLA201200036761 dated May 11, 2016 was validly issued by respondent to petitioner for examination of all its internal revenue taxes for taxable year 2014; that the issuance of the subject FAN has not yet prescribed; and that the assessed deficiency taxes are *prima*

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[49] Joint Issues of the Case, *Compliance (To the Order dated May 9, 2019)*, Docket, pp. 223 to 224.

facie correct and made in good faith, and petitioner has the duty of proving otherwise.

THE COURT'S RULING

The present *Petition for Review* lacks merit.

Since respondent questions the jurisdiction of this Court and for an orderly disposition of this case, such matter shall be primarily addressed.

This Court has jurisdiction over the instant case.

Section 7(a)(1) of Republic Act (RA) No. 1125[50], as amended by RA No. 9282[51], 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**;" *(Emphasis added)*

Based on the foregoing provision, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the

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[50] AN ACT CREATING THE COURT OF TAX APPEALS.

[51] 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

National Internal Revenue Code (NIRC) or related laws administered by the BIR.[52]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[53] the Supreme Court held as follows, to wit:

> "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.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David,*[54] **we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue**. Also, in *Commissioner of Internal Revenue v. Court of Appeals,*[55] the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (*Emphasis Supplied*)

Based on the foregoing jurisprudential pronouncements, this Court has the authority or jurisdiction to act on a petition to invalidate or annul the distraint orders of the respondent.

In the present *Petition of Review,* petitioner questions the validity of the subject *Warrant of Distraint and/or Levy.* Correspondingly, this Court may look into the validity thereof, and depending on the attendant circumstances, it may rule on the validity or invalidity of the same.

[52] *Commissioner of Internal Revenue vs. Hamrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010.
[53] G.R. No. 162852, December 16, 2004.
[54] 111 Phil. 197 (1961).
[55] G.R. No. 115712, February 25, 1999.

At this juncture, however, We rule that the subject *Warrant of Distraint and/or Levy* is valid.

Since the subject tax assessments have become final, executory, and demandable, the subject Warrant of Distraint and/or Levy is valid.

Section 228 of the NIRC of 1997 reads:

"Section 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: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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 <u>in such *form and manner* as may be prescribed by implementing rules and regulations</u>. 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." *(Emphases, italics and underscoring added)*

Based on the foregoing provision, a tax assessment issued by the BIR may be protested administratively, within thirty (30) days from receipt thereof, by filing either a request for reconsideration or reinvestigation, **in such <u>form and manner</u> as may be prescribed by implementing rules and regulations.**

Implementing the above-quoted Section 228, particularly the *form and manner* of filing of the requests for reconsideration and for reinvestigation, Section 3 of RR No. 12-99[56], as amended by RR No. 18-2013[57], provides, in part, as follows:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[58] within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of

[56] SUBJECT: 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[57] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

[58] That is, the *"Formal Letter of Demand and Final Assessment Notice".*

additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered on which his protest is based, otherwise, **this protest shall be considered *void and without force and effect*.**

xxx xxx xxx

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a **valid** protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. *gr* xxx xxx xxx." *(Emphases added)*

On the basis of the foregoing provisions, the form and manner of protests to be filed by the concerned taxpayer has been clearly and distinctively defined. Particularly, a distinction has been made between the two (2) types of protest, *i.e.*, a *request for reconsideration* and a *request for reinvestigation*. Thus, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside.[59]

Clearly, in a *request for reconsideration*, the plea for re-evaluation of the assessment is *on the basis of existing records without need of additional evidence*, while in a *request for reinvestigation*, such plea for re-evaluation is *on the basis of newly discovered or additional evidence that the taxpayer intends to present in the reinvestigation*. Furthermore, it must be pointed out that the distinction between a *request for reconsideration* and a *request for reinvestigation* is significant for the purpose of identifying which request triggers the application or operation of the sixty (60)-day period, within which to submit all relevant supporting documents, as determined by the concerned taxpayer. Apparently, the said sixty (60)-day period applies only to *requests for reinvestigation*.

In any case, the protest must state the following: (1) the nature thereof (whether *reconsideration* or *reinvestigation*, and in case of the latter, it must specify the newly discovered or additional evidence the taxpayer intends to present); (2) date of the assessment notice; and (3) the applicable law, rules and regulations, or jurisprudence on which his protest is based; otherwise, the protest shall be considered void, and without force and effect.

In this case, the *supposed* protest letter of petitioner did not comply with Section 228 of the NIRC of 1997, in relation to the above-quoted provisions Section 3 of RR No. 12-99, as amended by RR No. 18-2013.

After receiving the FAN, *Assessment Notices*, and *Details of Discrepancies*, all dated December 15, 2017, issued against it, on

[59] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

December 20, 2017,[60] petitioner filed on January 15, 2018, the letter evenly dated and the Annex "A" thereof.[61] A cursory examination thereof would reveal that while petitioner therein indicates its date of receipt of the subject FAN and a certain form of legal basis to support some of its arguments against FAN, nowhere is it stated whether its protest is a *request for reconsideration* or a *request for reinvestigation*, as required under the aforequoted portions of Section 3 of RR No. 12-99, as amended by RR No. 18-2013. Nevertheless, even granting that this Court is justified to ignore the said requirement, it cannot determine whether the same is a *request for reconsideration* or a *request of reinvestigation*, since there is no plea of re-evaluation either *"on the basis of existing records without need of additional evidence"* or *"on the basis of newly discovered or additional evidence that the taxpayer intends to present"*.

Such being the case, the said letter with the said Annex cannot be considered as a valid protest, and thus, without force and effect.

And even granting further that the said lack of statement as to the type of protest which petitioner has filed may be may be brushed aside, at all, and consider petitioner's letter dated January 15, 2018 as a *request for reinvestigation* as it has requested *"to submit...records against* [the BIR's] *findings"*, the same is still of no consequence. This is so because there is no indication that petitioner submitted *"all relevant supporting documents"* within sixty (60) days from the filing of the said letter dated January 15, 2018. Correspondingly, for petitioner's failure to submit the said documents within the sixty (60)-day period, the subject tax assessments have become final.

Similarly, petitioner's *Supplemental Protest* dated January 25, 2018 filed on January 28, 2018[62] cannot be considered as a valid protest. It is noteworthy that the same likewise failed to indicate whether it is a *request for reconsideration* or a *request of reinvestigation*. Furthermore, even granting again that petitioner's failure to indicate which type of protest the said *Supplemental Protest*

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[60] Par. 15, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 19 and 155, respectively; Exhibits "P-2" and "R-4", BIR Records, pp. 351 to 358.

[61] Exhibits "P-7", "P-7-A", "P-7-B", and "R-5, BIR Records, pp. 366 to 367; cf: As to the fact of filing of petitioner's letter dated January 15, 2018 with the BIR on the same date, refer to Par. 4, *Answer*, Docket, p. 155.

[62] Exhibits "P-8" and "R-6", BIR Records, pp. 369 to 374. While under par. I-a, Joint Stipulation of Facts, *Compliance (To the Order dated May 9, 2019)* (Docket, p. 223) is to the effect that the date of receipt is "January 28, 2018", the said Exhibits states otherwise, and considering that the latter date fell on a Sunday.

is may be excused, this Court cannot determine whether the same is a *request for reconsideration* or a *request of reinvestigation*, since there is no plea of re-evaluation either *"on the basis of existing records without need of additional evidence"* or *"on the basis of newly discovered or additional evidence that the taxpayer intends to present"*, just as in the case of the letter dated January 15, 2018.

More importantly, even when this Court ought to consider petitioner's *Supplemental Protest* as a valid protest, the same likewise has no effect whatsoever, since it was filed beyond the period to protest an assessment as provided under the law. As established, petitioner filed the said *Supplemental Protest* only on January 28, 2018.[63] Considering that the subject tax assessments were received by petitioner on December 20, 2017,[64] the filing of the same is already beyond the thirty (30)-day period to file a protest thereto, pursuant to the aforequoted pertinent portions of Section 3 of RR No. 12-99, as amended by RR No. 18-2013, in relation to Section 228 of the NIRC of 1997. It is already settled that failure to file an administrative protest within thirty (30) days from receipt of the FAN will render the assessment final, executory, and demandable.[65]

Correspondingly, since petitioner failed to file a valid protest, the subject tax assessments have become final, executory and demandable.

Apropos, a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC of 1997 can no longer be contested.[66] Petitioner is precluded from disputing the correctness of the assessment.[67] As a corollary, since the subject assessments have become final and executory, petitioner may not anymore raise

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[63] Exhibits "P-8" and "R-6", BIR Records, pp. 369 to 374. While under par. I-a, Joint Stipulation of Facts, *Compliance (To the Order dated May 9, 2019)* (Docket, p. 223) is to the effect that the date of receipt is "January 28, 2018", the said Exhibits states otherwise, and considering that the latter date fell on a Sunday.

[64] Par. 15, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 19 and 155, respectively; Exhibits "P-2" and "R-4", BIR Records, pp. 351 to 358; Par. 16, *Petition for Review* vis-à-vis Par. 4, *Answer*, Docket, pp. 19 and 155, respectively

[65] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

[66] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

[67] *Rizal Commercial Banking Corporation. vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006.

defenses which go into the merits of the assessments, *i.e.*, prescription of respondent's right to assess the tax.[68]

Consequently, the issuance of the assailed *Warrant of Distraint and/or Levy* dated November 6, 2018 is justified under the premises. The same can be enforced by the BIR since it proceeds or springs from tax assessments which have become final, executory, and demandable.

With the foregoing disquisitions, it becomes unnecessary to address the other issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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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[68] Refer to *Republic of the Philippines vs. Ker & Company, Ltd.*, G.R. No. L-21609, September 29, 1956.

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