REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Special Second Division*

**ALEX I. TAM represented by his Attorney-in-fact-Gilbert I. Tam,**
Petitioner,

- versus -

**BUREAU OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10948**

Members:

**RINGPIS-LIBAN,** *P.J., Chairperson,*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:
JAN 27 2026

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# DECISION

***RINGPIS-LIBAN, P.J.:***

## The Case

The *Petition for Review* filed on August 4, 2022, prays that the assessment issued by respondent against petitioner on its alleged deficiency income tax and value-added tax ("VAT") in the amount of Php9,902,825.90 for taxable year 2010, be declared null and void.[1]

## The Facts

Petitioner Alex I. Tam is registered with the Bureau of Internal Revenue ("BIR"), Revenue District Office No. 65, as a single proprietor of Tam Temperature Controller Center, with Taxpayer Identification Number ("TIN")

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[1] Summary of the Case, Pre-Trial Order dated March 5, 2024, Docket, p. 172.

157-489-526-000, and registered address at Imperial Street, Dayangdang, Naga City.[2]

Respondent BIR, headed by a Commissioner, is a government agency tasked in the collection and administration of tax with main office address in BIR Road, Diliman, Quezon City.[3]

On November 17, 2020, the BIR issued the *Letter of Authority* ("LOA"), with LOA No. eLA201700028001/LOA-R10-2020-00000002,[4] signed by Mr. Rozil R. Lozares, Regional Director of Revenue Region No. 10 – Legazpi City, authorizing Revenue Officer ("RO") Sheila Rebustillo and Group Supervisor Ruth Bigata of the said Revenue Region's Regional Investigation Division, to examine the books of accounts and other accounting records of petitioner, for all internal revenue taxes, including documentary stamp tax and other taxes (miscellaneous tax), for the period from January 1, 2010 to December 31, 2010.

Subsequently, the BIR issued the *Notice of Discrepancy* on September 22, 2021,[5] signed by OIC-Chief, Regional Investigation Division, Ms. Ruth A. Bigata, finding petitioner liable for deficiency income tax and VAT for the period January 1, 2010 to December 31, 2010.

On January 10, 2022, the BIR issued the *Preliminary Assessment Notice* ("PAN"), with attached *Details of Discrepancies*,[6] finding petitioner liable for deficiency income tax and VAT for the taxable year 2010.

Thereafter, the BIR issued the *Formal Letter of Demand* ("FLD") Parts I and II, with attached *Details of Discrepancies*, all dated February 21, 2022,[7] finding petitioner liable for deficiency income tax and VAT in the total amount of Php9,902,825.90, inclusive of surcharge, interests, and compromise penalty, for the taxable year 2010, to wit:

| | **Basic Tax Due** | **50% Surcharge** | **20% Interest** | **12% Interest** | **Total** |
|---|---|---|---|---|---|
| Income tax | Php2,177,901.46 | Php1,088,950.73 | Php2,903,868.62 | Php958,276.64 | Php7,128,997.45 |

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2 Business Details and General Business Information from the BIR's Integrated Tax System, BIR Records (Exhibit "R-10"), pp. 163 to 164. Although petitioner's witness, Mr. Gilbert I. Tam, testified that petitioner's business closed in 2005, Q&A Nos. 20 to 21, Docket p. 45, he also admitted that petitioner did not notify the BIR of such closure, Transcript of Stenographic Notes (TSN) taken during the hearing held on July 11, 2024, p. 6.

3 Parties (pertaining to respondent), *Petition for Review*, vis-à-vis par. 1, *Answer (Re: Petition for Review dated 29 July 2022)*, Docket, pp. 6 and 88, respectively.

4 Exhibit "R-1", BIR Records (Exhibit "R-10"), p. 123.

5 Exhibit "R-6", BIR Records (Exhibit "R-10"), pp. 154 to 156.

6 Exhibit "R-8" and "R-8-1", BIR Records (Exhibit "R-10"), pp. 240 to 243.

7 Exhibit "R-9" and "R-9-1", BIR Records (Exhibit "R-10"), pp. 274 to 279.

| | | | | | |
|---|---|---|---|---|---|
| VAT | 829,838.05 | 414,919.03 | 1,147,942.63 | 365,128.74 | 2,757,828.45 |
| Compromise penalty | | | | | 16,000.00 |
| **Total** | **Php3,007,739.51** | **Php1,503,869.76** | **Php4,051,811.25** | **Php1,323,405.38** | **Php9,902,825.90** |

The FLD was received by a certain Julius Cesar B. Sanchez, and witnessed by Mr. Arnulfo Cavite, on March 11, 2022.[8]

On May 23, 2022, petitioner, through his Attorney-in-fact, Mr. Gilbert Tam, filed a *Motion for Reinvestigation* dated May 16, 2022,[9] protesting the FLD.

The BIR replied through the letter dated June 3, 2022,[10] informing petitioner that his protest was filed beyond the thirty (30)-day reglementary period as required in Section 228 of the National Internal Revenue Code ("NIRC"), as amended, in relation to Section 3.1.4 of Revenue Regulations ("RR") No. 18-2013, hence, his protest is no longer admissible; and that the entire docket of his case was already forwarded to the Collection Division of Revenue Region No. 10 on May 10, 2022 for collection enforcement.

Thereafter, the BIR sent another letter to petitioner dated June 30, 2022,[11] acknowledging receipt of petitioner's follow up letter dated June 17, 2022 regarding his request for reinvestigation, and reiterating that his protest is no longer admissible as it was filed beyond the thirty (30)-day reglementary period, and that the entire docket was already forwarded to the Collection Division for collection enforcement, hence, his protest could no longer be considered, and that the computed tax liability will remain in effect and enforceable.

As earlier stated, petitioner filed the present *Petition for Review* on August 4, 2022.[12]

In the Resolution dated September 14, 2022,[13] the Court noted that petitioner failed to comply with Rule 7, Section 6 of the Rules of Court, provide details of the counsel's Mandatory Continuing Legal Education ("MCLE") compliance, and submit the power of attorney of Gilbert I. Tam, and thus, granted petitioner ten (10) days within which to comply with the same.

8 Acknowledgement of Receipt, BIR Records (Exhibit "R-10"), p. 272.
9 Exhibit "R-11", BIR Records (Exhibit "R-10"), pp. 295 to 296.
10 Exhibit "R-12", BIR Records (Exhibit "R-10"), p. 308.
11 Exhibit "R-13", BIR Records (Exhibit "R-10"), p. 323.
12 Docket, pp. 6 to 16.
13 Docket, pp. 36 to 37.

Thereafter, on November 18, 2022, petitioner filed his *Compliance*,[14] attaching thereto the *Supplemental to the Petition for Review*,[15] indicating therein the MCLE compliance details of the counsel, the *Judicial Affidavit* of Gilbert I. Tam,[16] and certified true copy of the *Special Power of Attorney*, authorizing Gilbert I. Tam as petitioner's attorney-in-fact.[17]

On August 8, 2023, respondent filed his *Answer (Re: Petition for Review dated 29 July 2022)*,[18] interposing the following special and affirmative defenses, to wit: (a) the Court has no jurisdiction over the *Petition*, the assessment has already become final, executory and demandable for failure of petitioner to file a protest; (b) assuming without conceding that the Court shall acquire jurisdiction, petitioner's right to due process was not violated, as the service of the FLD is proper; and (c) petitioner is liable for deficiency income tax, VAT, and compromise penalty.

Respondent then transmitted the *BIR Records* of the present case on August 18, 2023, consisting of 366 pages in one (1) folder.[19]

The Pre-Trial Conference was set and held on November 16, 2023.[20] Prior thereto, petitioner's *Pre-Trial Brief* was filed *via* accredited courier and received by the Court on October 16, 2023,[21] while *Respondent's Pre-Trial Brief* was submitted on November 13, 2023.[22] Petitioner likewise filed *via* accredited courier his *Pre-Trial Brief (Amended)* on November 13, 2023.[23]

During the said Pre-Trial Conference,[24] the Court, among others, directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA") on March 19, 2024. However, the PMC-CTA issued the *No Agreement To Mediate* dated March 19, 2024,[25] stating that the parties decided not to have their case mediated.

[14] Docket, pp. 39 to 40.
[15] Docket, pp. 41 to 42.
[16] Docket, pp. 43 to 48.
[17] Docket, pp. 49 to 51.
[18] Docket, pp. 88 to 104.
[19] *Compliance* dated August 18, 2023, Docket, pp. 108 to 110.
[20] Notice of Pre-Trial Conference dated August 17, 2023, Docket, pp. 106 to 107; Minutes of the hearing held on, and Order dated, November 16, 2023, Docket, pp. 154 to 155 and 157 to 159, respectively.
[21] Docket, pp. 114 to 118.
[22] Docket, pp. 121 to 125.
[23] Docket, pp. 161 to 166.
[24] Minutes of the hearing held on, and Order dated, November 16, 2023, Docket, pp. 154 to 155 and 157 to 159, respectively.
[25] Docket, p. 178.

In the meantime, having failed to file their *Joint Stipulation of Facts and Issues*,[26] the Court issued the Pre-Trial Order dated March 5, 2024,[27] thereby deeming the termination of the Pre-Trial.

Trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimony of his Attorney-in-fact, Mr. Gilbert I. Tam.[28]

The *Formal Offer of Evidence (For Petitioner)* was filed *via* accredited courier on July 18, 2024,[29] to which respondent submitted his *Comment (on Petitioner's Formal Offer of Evidence)* on August 12, 2024.[30] In the Resolution dated October 2, 2024,[31] the Court admitted all of petitioner's offered exhibits.

For his part, respondent offered the testimonies of the following ROs, namely: (1) Sheila B. Rebustillo;[32] and (2) Vanessa D. Mirafuentes.[33]

*Respondent's Formal Offer of Evidence* was filed on November 21, 2024,[34] while petitioner failed to file his comment thereto.[35] In the Resolution dated February 3, 2025,[36] the Court admitted all of respondent's offered exhibits.

On February 26, 2025, petitioner filed *via* accredited courier his *Memorandum*,[37] while respondent submitted his *Memorandum* on March 7, 2025.[38]

The present case was considered submitted for decision on March 18, 2025.[39]

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[26] Records Verification dated January 30, 2024 issued by the Judicial Records Division of this Court, Docket, p. 170.
[27] Docket, pp. 172 to 177.
[28] Docket, pp. 43 to 48; Minutes of the hearing held on, and Order dated, July 11, 2024, Docket, pp. 188 and 192, respectively.
[29] Docket, pp. 193 to 194.
[30] Docket, pp. 208 to 211.
[31] Docket, pp. 216 to 217.
[32] Exhibit "R-14", Docket, pp. 145 to 153; Minutes of the hearing held on, and Order dated, November 14, 2024, Docket, pp. 232 to 234.
[33] Exhibit "R-15", Docket, pp. 133 to 139; Minutes of the hearing held on, and Order dated, November 14, 2024, Docket, pp. 232 to 234.
[34] Docket, pp. 236 to 243.
[35] Records Verification dated January 7, 2025 issued by the Judicial Records Division of this Court, Docket, p. 246.
[36] Docket, pp. 249 to 250.
[37] Docket, pp. 277 to 288.
[38] Docket, pp. 252 to 273.
[39] Minute Resolution dated March 18, 2025, Docket, p. 290.

Thereafter, petitioner filed *via* accredited courier his *Supplemental to the Memorandum*, received by the Court on June 25, 2025. Hence, the present case was considered submitted anew for decision on July 11, 2025.[40]

## The Issue

The parties agreed during the Pre-Trial Conference to the following issues for this Court's resolution, to wit:

> "1. Whether the Honorable Court of Tax Appeals has jurisdiction over the Petition for Review;
>
> 2. Whether or not petitioner['s] protest before the BIR was filed on time; and
>
> 3. Whether or not petitioner is liable for deficiency income tax and value-added tax in the amount of [Php]9,902,825.90 for the taxable year 2010."[41]

***Petitioner's arguments:***

Petitioner argues that granting the service of the Formal Letter of Demand was not properly made by the BIR to the petitioner, the filing of the *Motion for Reinvestigation* should not be technically construed as belated filing as there is no period to reckon in the case at bar; that according to the BIR's database, two (2) purchasers namely: Sta 22 Trading and Construction Company and Subic Matrix Concrete Corporation remitted withholding tax for the period 2010 where the said tax were credited to the TIN of the petitioner, on that basis, the BIR assessed the petitioner that he failed to file the income tax return, VAT return as well as pay the tax; that he is not doing business in the Philippines for he is an Overseas Filipino Worker since 2005 and up to the present; that the assessment made by the BIR is sourced from unverified information; that the information could have been validated had the BIR done verification by asking the assistance of the BIR counterpart in Olongapo and Zambales where the two corporations originated the withholding tax; that the BIR only relied on the database without performing validation or verification with the purchasers – Sta 22 Trading and Construction Company and Subic Matrix Concrete Corporation; and that the tax assessment

[40] Minute Resolution dated July 11, 2025.

[41] Stipulation of Issues, Pre-Trial Order dated March 5, 2024, Docket, p. 173; Minutes of the hearing held on, and Order dated, November 16, 2023, Docket, pp. 154 to 155 and 157 to 159, respectively.

made by the BIR to the petitioner must be set aside for lack of factual and legal basis.

Petitioner also argues that the LOA being wanting and not properly served to him as provided by the BIR regulations and tax law, there can be no authority from the BIR examiners to proceed from the investigation of the petitioner and to come out with the assessment.

***Respondent's counter-arguments:***

Respondent contends that the Court has no jurisdiction over the *Petition*, as the assessment has already become final, executory and demandable for failure of petitioner to file a protest; that assuming without conceding that the Court shall acquire jurisdiction, petitioner's right to due process was not violated, as the service of the FLD is proper; that petitioner failed to notify the BIR of the closure of his business; and that petitioner is liable for deficiency income tax, VAT, and compromise penalty.

## Discussion/Ruling

The present petition must be dismissed.

In the said *Petition for Review*, petitioner claims that it received on July 6, 2022 the BIR Regional Director's reply/ruling to his *Motion for Reinvestigation*, as such, he has thirty (30) days from receipt thereof to appeal to this Court. Thus, petitioner allegedly has until August 5, 2022 to file the instant *Petition for Review.*

Petitioner's position is untenable.

Jurisdiction over the subject matter is required for a court to act on any controversy. It is conferred by law and not by the consent or waiver upon a court. As such, if a court lacks jurisdiction over an action, it cannot decide the case on the merits and must dismiss it.[42] To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[43]

Section 228 of the NIRC of 1997 provides as follows:

[42] *CE Casecnan Water and Energy Company, Inc. vs. The Province of Nueva Ecija, et al.,* G.R. No. 196278, June 17, 2015.

[43] *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Tax Appeals,* G.R. No. L-23988, January 2, 1968.

"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: xxx

xxx xxx xxx

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

Relative thereto, Sections 7(a)(1) and (2), and 11 of Republic Act ("RA") No. 1125,[44] as amended by RA No. 9282,[45] confers jurisdiction to this Court relative to decisions and inactions of respondent, and states the manner of appealing the same, respectively, to wit:

"SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:

(a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the

[44] AN ACT CREATING THE COURT OF TAX APPEALS.
[45] 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.

National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphases added)*

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue...**may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

**Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphases added)*

Based on the foregoing, this Court has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

It is settled that the said thirty (30)-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[46] Simply put, the thirty (30)-day period to appeal is jurisdictional and non-extendible.[47]

Moreover, it must be pointed out that the failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional.[48] Pertinently, the right to appeal is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed.[49] In other words, the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law.[50]

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[46] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[47] *Pangasinan Transportation Co. Inc. vs. Blaquera*, G.R. No. L-13101, April 29, 1960; *Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue*, G.R. No. L-23501, May 16, 1967.

[48] *Ruiz, et al. vs. Delos Santos*, G.R. No. 166386, January 27, 2009.

[49] *Bejarasco, Jr. vs. People of the Philippines*, G.R. No. 159781, February 2, 2011.

[50] *Cadena vs. Civil Service Commission*, G.R. No. 191412, January 17, 2012.

As a corollary, the taxpayer's failure to file a petition for review with this Court within the statutory period renders the disputed assessment final, executory and demandable, thereby precluding said taxpayer from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.[51]

In this case, the BIR issued two (2) letters to petitioner in reply to his *Motion for Reinvestigation*, to wit:

(1) letter dated June 3, 2022,[52] informing petitioner that his protest was filed beyond the thirty (30)-day reglementary period as required in Section 228 of the NIRC, as amended, in relation to Section 3.1.4 of RR No. 18-2013, hence, his protest is no longer admissible; and that the entire docket of his case was already forwarded to the Collection Division of Revenue Region No. 10 on May 10, 2022 for collection enforcement; and

(2) letter dated June 30, 2022,[53] acknowledging receipt of petitioner's follow up letter dated June 17, 2022 regarding his request for reinvestigation, and reiterating that his protest is no longer admissible as it was filed beyond the thirty (30)-day reglementary period, and that the entire docket was already forwarded to the Collection Division for collection enforcement, hence, his protest could no longer be considered, and that the computed tax liability will remain in effect and enforceable.

No evidence was presented to prove that the first BIR letter dated June 3, 2022 was received by petitioner. However, the second BIR letter dated June 30, 2022, which was the basis of the appeal of petitioner to this Court, was allegedly received by petitioner on July 6, 2022.[54] Hence, counting thirty (30) days therefrom, petitioner had until August 5, 2022 to file the present *Petition* before this Court, thus, the filing of the present *Petition for Review* on August 4, 2022[55] was allegedly timely made.

[51] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, supra.
[52] Exhibit "R-12", BIR Records (Exhibit "R-10"), p. 308.
[53] Exhibit "R-13", BIR Records (Exhibit "R-10"), p. 323.
[54] First paragraph, *Petition for Review*, Docket, p. 6.
[55] Docket, pp. 6 to 16.

However, the Court notes that the BIR letter dated June 30, 2022,[56] informing petitioner that his protest is no longer admissible, does not bear the date of receipt by petitioner. Also, based on the records, it is not clear whether the said letter was personally served or was sent through mail or through other means. Further, petitioner failed to present any testimony that would prove and establish petitioner's date of receipt of the said BIR letter being appealed to this Court.[57]

Given these circumstances, there is no means for this Court to determine whether the present appeal was timely filed, *i.e.*, within the thirty (30)-day period prescribed under the afore-quoted Section 11 of RA No. 1125, as amended by RA No. 9282.

Undoubtedly, the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it.[58]

The timeliness of an appeal is a factual issue that requires a review of the evidence presented.[59] Since petitioner failed to provide supporting evidence showing whether the BIR letter dated June 30, 2022 was received on July 6, 2022, he did not establish that the *Petition for Review*, filed on August 4, 2022, was timely made. As this is a jurisdictional requirement, this Court has no other recourse but to dismiss the petition for lack of jurisdiction.

Second, even granting that Petitioner's appeal was made within thirty (30) days from receipt of the BIR letter dated June 30, 2022, the present *Petition for Review* must still be dismissed.

Petitioner argues that granting the service of the Formal Letter of Demand was not properly made by the BIR to the petitioner, the filing of the *Motion for Reinvestigation* should not be technically construed as belated filing as there is no period to reckon in the case at bar.

On the other hand, respondent contends that the Court has no jurisdiction over the *Petition*, as the assessment for deficiency taxes against petitioner is already final, executory and demandable petitioner failed to file a valid protest.

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[56] Exhibit "R-13", BIR Records (Exhibit "R-10"), p. 323.

[57] Refer to the *Judicial Affidavit* of Gilbert I. Tam, Docket, pp. 43 to 48; and TSN taken during the hearing held on July 11, 2024.

[58] *Far East Bank & Trust Company vs. Robert Mar Chante, a.k.a. Robert Mar G. Chan*, G.R. No. 170598, October 9, 2013.

[59] Refer to *Republic of the Philippines represented by The Presidential Commission on Good Government (PCGG) and Mid-Pasig Land Development Corp. vs. Augustus Albert V. Martinez, et al.*, G.R. Nos. 224438-40, September 3, 2020.

Respondent avers that petitioner filed a *Motion for Reinvestigation* on May 16, 2022, contesting the FLD issued by the BIR on February 21, 2022. The FLD was allegedly received by petitioner on March 11, 2022. Applying the rules, respondent submits that petitioner has thirty (30) days from the receipt of the FLD, or April 10, 2022, to file his protest. However, petitioner filed his *Motion for Reinvestigation* only on May 16, 2022, more than thirty (30) days from the allowed period to file his protest.

The Court agrees with respondent that this Court has no jurisdiction over the present *Petition*, but on a different reasoning.

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 taxpayers 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 <u>within thirty (30) days from receipt</u> of the assessment <u>in such form and manner</u> 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; <u>otherwise, the assessment shall become final</u>.**
>
> xxx xxx xxx." *(Emphasis 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 request for reinvestigation, **in such form and manner** as may be prescribed by implementing rules and regulations.

Implementing the above-quoted Section 228, Section 3 of RR No. 12-99,[60] as amended by RR No. 18-2013,[61] and as renumbered by RR No. 7-2018,[62] 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
>
> 3.1.5[63] *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may **protest administratively against the aforesaid FLD/FAN[64] 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 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**

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60 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

62 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

63 Formerly Section 3.1.4 under RR No. 18-2013 but was renumbered to Section 3.1.5 pursuant to Section 2 of RR No. 7-2018.

64 That is, the *"Formal Letter of Demand and Final Assessment Notice"*.

**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 *void and without force and effect.***

xxx xxx xxx

**If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**" *(Emphases and underscoring added)*

Based on above, the protest must be filed within (30) days from date of receipt of the FLD/FAN, and 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 the present case, it was not proven by petitioner when he actually received the subject FLD. Petitioner's *Motion for Reinvestigation* dated May 16, 2022 filed on May 23, 2022,[65] protesting the FLD, is bereft of any indication as to when petitioner received the subject FLD. In fact, no evidence was presented to prove when the FLD was received by petitioner, and thus, this Court cannot determine whether the Petitioner's *Motion for Reinvestigation* was indeed timely filed with the BIR.

Pursuant to Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, and renumbered by RR No. 7-2018, if the taxpayer fails to file a valid protest against the FLD and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. Thus, it behooves petitioner to show that he indeed file his *Motion for Reinvestigation* within the said thirty (30)-day period.

Moreover, the subject protest, which is apparently for *reinvestigation*, did not specify the newly discovered or additional evidence the taxpayer intends to present, and did not also state the date of the assessment notice in violation of Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, and renumbered by RR No. 7-2018. To be sure, when a taxpayer files a petition for review before

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[65] Exhibit "R-11", BIR Records (Exhibit "R-10"), pp. 295 to 296.

this Court without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and this Court has no jurisdiction.[66]

Section 228 of the NIRC is clear. The administrative protest must be filed not only within the stated period, but also in such form and manner as may be prescribed by implementing rules and regulations. A protest which fails to comply with the requirements of RR No. 12-99, as amended by RR No. 18-2013, as mandated by Section 228 of the NIRC, is void.[67]

It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[68] Moreover, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[69] Consequently, this Court cannot rule on the matter relating to the subject deficiency tax assessments.

**ACCORDINGLY**, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

**SO ORDERED**.

**MA. BELEN M. RINGPIS-LIBAN**
*Presiding Justice*

**WE CONCUR:**

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

**CORAZON G. FERRER-FLORES**
Associate Justice

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[66] *Commissioner of Internal Revenue vs. Court of Tax Appeals-Third Division and Citysuper, Incorporated*, G.R. No. 239464, May 10, 2021.
[67] Refer to *Commissioner of Internal Revenue vs. Court of Tax Appeals-Third Division and Citysuper, Incorporated*, G.R. No. 239464, May 10, 2021.
[68] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, supra.
[69] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

## 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.

**MA. BELEN M. RINGPIS-LIBAN**
*Presiding Justice*