REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HIJO AGRARIAN REFORM BENEFICIARIES COOPERATIVE (HARBCO),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9797

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

NOV 28 2022 2:25 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Hijo Agrarian Reform Beneficiaries Cooperative (**petitioner/HARBCO**) pursuant to Section 7(a)(1)[2] of Republic Act (**RA**) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised

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[1] Filed on 02 April 2018, Division Docket, Volume I, pp. 10-59, with annexes.

[2] **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 or other laws administered by the Bureau of Internal Revenue[.]

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

[4] SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

Rules of the Court of Tax Appeals (**RRCTA**). It seeks to appeal the Final Decision on Disputed Assessment (**FDDA**) dated 22 September 2017[6] issued by the Commissioner of Internal Revenue (**respondent/CIR**), through the Officer-in-Charge Regional Director (**OIC-RD**) of Revenue Region (**RR**) No. 19 of the Bureau of Internal Revenue (**BIR**), denying petitioner's Protest dated 28 March 2016[7] against the Amended Formal Letter of Demand/Final Assessment Notice (**FLD/FAN**) dated 02 March 2016[8], and ordering the payment of deficiency taxes in the aggregate amount of **₱2,906,162.20**, inclusive of increments, for the taxable year (**TY**) 2010.

PARTIES OF THE CASE

Petitioner is an agrarian reform cooperative duly registered with the Cooperative Development Authority (**CDA**) under Registration No. 9520-11002482[9], represented by its Chairman, Pablito G. Romanillos (**Romanillos**), with business address at HARBCO Building, Gumamela Drive, Sitio Apokon, Tagum City, Davao del Norte.

Respondent, on the other hand, is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

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5 SEC. 4. *Where to appeal; mode of appeal.* —
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

6 Exhibit "P-26", Division Docket, Volume II, p. 710; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, Division Docket, Volume III, pp. 1127-1128; Par. 8, Joint Stipulation of Facts (JSF), Division Docket, Volume I, p. 534.

7 Exhibit "P-25", id., pp. 705-707; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 7, JSF, id., p. 533.

8 Exhibit "P-24", id., pp. 699-702; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 6, JSF, id.

9 Exhibits "P-1" and "P-2", id., pp. 588 and 590, respectively; Denied admission for failure to submit the duly marked exhibits *per* Resolution dated 24 August 2020, id.; Par. 1.a, JSF, id., p. 531.

FACTS OF THE CASE

On 20 October 2014, petitioner received a copy of the Preliminary Assessment Notice (**PAN**) dated 07 October 2014[10], with attached Details of Discrepancies, assessing it for deficiency Withholding Tax on Compensation (**WTC**) and Expanded Withholding Tax (**EWT**) for TY 2010 in the aggregate amount of ₱3,453,376.98, broken down as follows:

Tax Type	Basic	Interest	Surcharge	Compromise Penalty	Total
WTC	₱–	₱–	₱–	₱37,000.00	₱37,000.00
EWT	1,739,167.68	1,217,417.38	434,791.92	25,000.00	3,416,376.98
Total	**₱1,739,167.68**	**₱1,217,417.38**	**₱434,791.92**	**₱62,000.00**	**₱3,453,376.98**

On 10 November 2014, petitioner filed its Protest dated 03 November 2014[11] to the PAN, assailing the assessment for deficiency taxes based on the accounting data furnished by Lapanday Foods Corporation (**LFC**).

On 19 January 2015, petitioner received a Letter dated 12 December 2014[12] from then OIC-RD Atty. Glen A. Geraldino (**Atty. Geraldino**), advising it that the BIR will be issuing an FLD/FAN and that it has thirty (30) days from receipt thereof to file a protest, which should be accompanied by a notarized Waiver of the Defense of Prescription and documentary evidence to rebut the audit findings.

On 03 February 2015, petitioner received a copy of the FLD/FAN dated 27 January 2015[13] signed by then OIC-RD Atty. Geraldino, reiterating the amount of tax deficiency for the tax items specified in the PAN.

10 Exhibit "P-17", id., pp. 675-676; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 2, JSF, id., p. 532.

11 Exhibit "P-19-A", id., pp. 628-683; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.

12 Exhibit "P-20", id., p. 686; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 3, JSF, id., p. 532.

13 Exhibit "P-21", id. pp. 688-690; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 4, JSF, id., p. 533.

On 26 February 2015, petitioner filed its Protest dated 25 February 2015[14] against the FLD/FAN. On 29 September 2015, petitioner received a Letter dated 21 September 2015[15] from then OIC-RD Atty. Geraldino, informing it that the BIR treated its Protest against the FLD/FAN as a request for reinvestigation.

On 10 March 2016, petitioner received a copy of the Amended FLD/FAN dated 02 March 2016[16] signed by then RD Romulo L. Aguila, Jr. (**Aguila**), increasing the assessment from ₱3,453,376.98 to ₱3,952,282.72, broken down as follows:

Tax Type	Basic	Interest	Surcharge	Compromise Penalty	Total
WTC	₱-	₱-	₱-	₱37,000.00	₱37,000.00
EWT	1,520,134.23	1,635,081.37	760,067.12	-	3,915,282.72
Total	**₱1,520,134.23**	**₱1,635,081.37**	**₱760,067.12**	**₱37,000.00**	**₱3,952,282.72**

On 08 April 2016, petitioner filed its Protest dated 28 March 2016[17] against the Amended FLD/FAN, requesting for a reinvestigation.

On 03 October 2017, petitioner received a copy of the FDDA dated 22 September 2017[18] signed by then OIC-RD Nuzar N. Balatero (**Balatero**), decreasing the assessment from ₱3,952,282.72 to ₱2,906,162.20, broken down as follows:

Tax Type	Basic	Interest	Surcharge	Compromise Penalty	Total
WTC	₱-	₱-	₱-	₱37,000.00	₱37,000.00
EWT	1,003,588.12	1,363,780.02	501,794.06	-	2,869,162.20
Total	**₱1,003,588.12**	**₱1,363,780.02**	**₱501,794.06**	**₱37,000.00**	**₱2,906,162.20**

14 Exhibit "P-22", id., pp. 693-694; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.

15 Exhibit "P-23", id., p. 697; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 5, JSF, id., p. 533.

16 Supra at note 8.

17 Supra at note 7.

18 Supra at note 6.

On 02 November 2017, petitioner filed with the Office of the Commissioner (**OCOM**) a "Motion for Reconsideration"[19] (**MR**) on the FDDA. However, respondent has not resolved the said MR.

PROCEEDINGS BEFORE THE COURT

On 02 April 2018, petitioner filed a Petition for Review[20] before the First Division[21], docketed as CTA Case No. 9797. It prayed for the setting aside of the FDDA for lack of bases in fact and in law, and for having been issued beyond the prescriptive period prescribed by law.

After being granted two (2) extensions of time by the First Division[22], respondent filed her Answer[23] on 18 June 2018. There, respondent cited the following special and affirmative defenses: (1) the Court has no jurisdiction over the instant petition as the assessment has already become final, executory and demandable; (2) respondent's right to assess petitioner for deficiency withholding taxes for TY 2010 has not yet prescribed as the 10-year prescriptive period applies due to petitioner's failure to file a return; (3) the assessment has bases both in fact and in law; (4) petitioner is liable for surcharge, interest and compromise penaly; and, (5) the assessment issued against petitioner is valid and lawful.

On 05 July 2018, the First Division issued a Notice of Pre-Trial Conference[24] and set the case for pre-trial conference on 16 August 2018.

Ahead of the scheduled pre-trial conference, respondent filed the Pre-Trial Brief[25] on 09 August 2018, while petitioner filed its Pre-Trial Brief[26] on 13 August 2018.

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19 Exhibit "P-27", id., pp. 715-725; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 24 August 2020, id.; Par. 9, JSF, Division Docket, Volume I, p. 534.

20 Supra at note 1.

21 The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Members.

22 *See* Orders dated 09 May 2018 and 11 June 2018, Division Docket, Volume I, pp. 67-68 and 76, respectively.

23 Id., pp. 77-90.

24 Id., pp. 92-93.

25 Id., pp. 96-101.

26 Id., pp. 125-129.

On 10 August 2018, respondent forwarded to the First Division the BIR Records of the case, consisting of 312 pages in one (1) folder.[27] The First Division noted the same in the Resolution dated 10 September 2018.[28]

On 16 August 2018, the Pre-Trial Conference proceeded where the parties were granted fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[29] On 31 August 2018, the parties submitted their JSFI.[30]

In the Order dated 19 September 2018[31], the First Division transferred the case to the Second Division.[32]

On 05 December 2018, the Second Division issued a Pre-Trial Order[33], approving the parties' JSFI, terminating the pre-trial and setting the presentation of petitioner's witnesses on 16 January 2019.

On 09 January 2019, the Second Division reset the presentation of petitioner's witnesses to 11 February 2019.[34]

Trial thereafter ensued where petitioner presented the testimony of Romanillos, petitioner's Chairman of the Board of Directors (**BOD**) during the TY covering the disputed assessment.

On the witness stand, Romanillos identified his Judicial Affidavit dated 28 November 2018[35], where he declared essentially that: (1) petitioner is engaged in the business of agricultural production, particularly of Cavendish banana for export, over the agricultural land

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27 *See* Compliance dated 09 August 2018, id., pp. 121-123.
28 Id., p. 537.
29 *See* Order dated 16 August 2018, id., pp. 528-530.
30 Id., pp. 531-535.
31 Id., p. 544.
32 The case was transferred to the Second Division pursuant to CTA Administrative Circular No. 02-2018 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court".

The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Member.
33 Division Docket, Volume I, pp. 549-555.
34 *See* Notice of Resetting dated 09 January 2019, id., p. 556; The 16 January 2019 Hearing was reset to 11 February 2019 due to a conflict of schedule, particularly the courtesy call of the justices of the Court of Tax Appeals (CTA) to then Chief Justice Lucas P. Bersamin.
35 Exhibit "P-37", id., Volume II, pp. 572-586.

awarded under the Comprehensive Agrarian Reform Program (**CARP**); (2) the present case commenced when petitioner received the PAN[36] on 24 October 2014, assessing it with deficiency withholding taxes for TY 2010 in the total amount of ₱3,453,376.98; (3) petitioner then wrote the BIR to explain that, since December 2008, LFC has been managing its operations, *i.e.*, all coop transactions including obligations to the government such as contributions to Philhealth, Pag-ibig and BIR filings and payments; (4) after comparing or reconciling petitioner's records with LFC, petitioner filed a Protest[37] to the PAN; (5) the BIR treated petitioner's Protest to the PAN as a request for reinvestigation; (6) despite OIC-RD Atty. Geraldino's Letter dated 12 December 2014[38], requiring the submission of a Waiver of the Defense of Prescription, petitioner decided not to execute the same as that would work against its interest; (7) petitioner did not ask for a reinvestigation of the findings in the PAN; (8) petitioner received the FLD/FAN[39] on 03 February 2015, assessing deficiency withholding taxes in the total amount of ₱3,453,376.98; (9) petitioner then received OIC-RD Geraldino's Letter dated 21 September 2015[40], treating petitioner's Protest[41] against the FLD/FAN as a request for reinvestigation; (10) petitioner received the Amended FLD/FAN[42], increasing the assessment to ₱3,952,282.72; (11) petitioner filed a Protest[43] against the Amended FLD/FAN, with a request for reinvestigation; (12) petitioner received the FDDA[44], decreasing the assessment to ₱2,906,162.20; (13) petitioner filed an MR[45] on the FDDA before the OCOM; and, (14) since respondent has not acted on its MR on the FDDA, petitioner allegedly has one hundred eighty (180) days from receipt of the FDDA to file an appeal before the CTA.

After Romanillos completed his testimony during the 11 February 2019 hearing[46], the case was referred to the Philippine Mediation Center Unit - Court of Tax Appeals (**PMC-CTA**) for conciliation

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36 Supra at note 10.
37 Supra at note 11.
38 Supra at note 12.
39 Supra at note 13.
40 Supra at note 15.
41 Supra at note 14.
42 Supra at note 8.
43 Supra at note 7.
44 Supra at note 6.
45 Supra at note 19.
46 *See* Minutes of the Hearing and Order, both dated 11 February 2019, Division Docket, Volume II, pp. 1014 and 1015, respectively.

proceedings.[47] However, on 17 July 2019, the PMC-CTA filed a Mediator's Report[48] signed by the Mediator, (Ret.) Justice Oswaldo D. Agcaoili, indicating that the mediation was unsuccessful. As such, the Second Division later set the case for continuation of petitioner's presentation of evidence on 23 September 2019.[49]

Upon petitioner's motion[50], the Second Division issued a subpoena *duces tecum ad testificandum* to the following LFC employees who were to be presented as hostile witnesses: (1) Manolito F. Dagatan (**Dagatan**); and, (2) Jose Cornelio A. Bergado (**Bergado**).[51] The Court likewise ordered them to bring certain documents necessary as evidence in the present case.[52] However, upon petitioner's motion during the 23 September 2019 hearing, the presentation of the said hostile witnesses was reset to 25 November 2019.[53]

On 22 November 2019, petitioner filed a "Motion for Postponement and Substitution of Witnesses"[54], which the Second Division granted during the 25 November 2019 hearing.[55] Upon motion of petitioner's counsel and over the objection of respondent's counsels, the Court again reset the presentation of all of petitioner's remaining witnesses to 03 February 2020.[56]

Upon oral manifestation of petitioner's counsel that she will no longer present further evidence, the Second Division granted petitioner five (5) days within which to file its Formal Offer of Evidence (**FOE**).[57] Accordingly, after being granted an extension of time[58], petitioner filed its FOE[59] on 24 February 2020, consisting of

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47 *See* Minutes of the Hearing and Order, both dated 06 May 2019, id., Volume III, pp. 1040 and 1041, respectively.
48 Id., p. 1044.
49 *See* Resolution dated 28 August 2019, id., p. 1054.
50 *See* "Motion for Issuance of Subpoena Duces Tecum Ad Testificandum" dated 02 September 2019, id., pp. 1057-1060
51 *See* Subpoena *Duces Tecum Ad Testificandum* dated 10 September 2019, id., p. 1070.
52 Id.
53 *See* Minutes of the Hearing and Order, both dated 23 September 2019, id., pp. 1074 and 1075, respectively.
54 Id., pp. 1076-1079.
55 *See* Minutes of the Hearing and Order, both dated 25 November 2019, id., pp. 1081 and 1082-1083, respectively.
56 Id.
57 *See* Minutes of the Hearing and Order, both dated 03 February 2020, id., pp. 1086 and 1087, respectively.
58 *See* Order dated 17 February 2020, id., p. 1094.
59 Id., pp. 1095-1106.

Exhibits "P-1" to "P-36", inclusive of sub-markings. Respondent then filed her Comment[60] thereto on 17 July 2020.

In the Resolution dated 24 August 2020[61], the Second Division denied all of petitioner's exhibits: (1) Exhibits "P-1", "P-2", "P-10", "P-11", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-19-A", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35" and "P-36"[62], for failure to submit

60 Id., pp. 1123-1124.
61 Id., pp. 1127-1128.
62

Exhibit No.	Description
"P-1"	Certificate of Registration No. 9520-11002482 issued by the Cooperative Development Authority (CDA).
"P-2"	Certificate of Compliance issued by the CDA to HARBCO dated 17 September 2018.
"P-10"	BIR Certificate of Registration No. OCN 2RC0000168322, in the name of HARBCO dated 22 January 2009, with TIN 005-079-103-000.
"P-11"	BIR Certificate of Registration No. OCN 2RC0001070802, in the name of HARBCO dated 16 September 2016, with TIN 005-079-103-000.
"P-13"	Notice for Inclusion as Top 20,000 Private Corporation issued by the Commissioner of Internal Revenue to HARBCO on 18 August 2011.
"P-14"	Certificate of Tax Exemption No. COOP-00132-11-RR-19-RDO112 Issued by the BIR RR No. 19 to HARBCO on 18 October 2011.
"P-15"	Certificate of Tax Exemption No. COOP-00050-17-RR-19-RDO112 Issued by the BIR RR No. 19 to HARBCO on 31 March 2017.
"P-16"	Sales Liquidation Report for the period ending Novmber 29, 2009, furnished by LFC to HARBCO, detailing the revenue from its operations and corresponding deductions made.
"P-17"	Preliminary Assessment Notice (PAN) dated 16 October 2014, and received by HARBCO on 20 October 2014, covering alleged tax deficiencies for the tax year 2010.
"P-18"	Letter dated 22 October 2014 of HARBCO to BIR RR No. 19 pertaining to the PAN, requesting for fifteen (15) days t prepare and reconcile their records with that of LFC.
"P-19"	Copy of electronic mail of Timmy A. Eñeco dated 21 October 2014 to HARBCO pertaining to the deficiency tax assessment.
"P-19-A"	Protest letter dated 03 November 2014 of HARBCO re PAN.
"P-20"	Letter dated 12 December 2014 from BIR RR No. 19 OIC-Regional Director to HARBCO advising it to submit a Waiver of Defense of Prescription, among others.
"P-21"	BIR Formal Letter of Demand/Final Assessment Notice dated 27 January 2015 received by HARBCO on 03 February 2015.
"P-22"	Protest letter of HARBCO to the FLD.
"P-23"	BIR RR No. 19 letter to HARBCO dated 21 September 2015 to HARBCO treating its protest dated 25 February 2015 as a request for reinvestigation.
"P-24"	BIR Amended Formal Letter of Demand dated 02 March 2016 amending the deficiency tax assessment from a total of P3,453,376.98 to P3,952,282.72.
"P-25"	Letter dated 28 March 2016 of HARBCO and received by the BIR on 08 April 2016 protesting the Amended FLD with a Request for Reinvestigation.

the duly marked exhibits; (2) Exhibit "P-3"[63], for failure of the exhibit formally offered to correspond with the document identified; and, (3) Exhibits "P-4", "P-5", "P-6", "P-7", "P-8", "P-9" and "P-12"[64], for failure to

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"P-26"	Final Decision on Disputed Assessment (FDDA) dated 22 September 2017 and received by HARBCO on 03 October 2017.
"P-27"	Motion for Reconsideration from the FDDA filed by HARBCO before the Office of the Commissioner of Internal Revenue on 02 November 2017.
"P-28"	Letter of BIR RR No. 19 to HARBCO dated 11 December 2017 informing it that their office shall forward HARBCO's case docket to the Revenue District Office 112 in Tagum City for the conduct of reconsideration.
"P-29"	Letter dated 04 January 2018 of the BIR Appellate Division to the counsel of HARBCO informing her their appeal was forwarded to the BIR Appellate Division for resolution and necessary action.
"P-30"	Letter dated 02 November 2017 of LFC to HARBCO Counsel transmitting several documents related to the deficiency tax assessment of HARBCO.
"P-31"	1604-CF filed by LFC for the year 2010 showing remittance by LFC as withholding agent of the taxes from HARBCO members and employees for the period January to December 2010.
"P-32"	Summary of Withholding Taxes Withheld and Paid for Field Labor for the Year 2010 made by LFC for the account of HARBCO.
"P-33"	1604-E filed by LFC for tax year 2010 showing remittance of taxes withheld from contractors including that of HARBCO's as supported by the MAP (Exh P-34).
"P-34"	Monthly Alphalist of Payees (MAP) from January to Decembert 2010 of LFC.
"P-35"	Audited Financial Statements of HARBCO as of December 31, 2010 and 2009 showing receipt of a copy by the BIR on 13 April 2011.
"P-36"	Audited Financial Statements of HARBCO as of December 31, 2011 and 2010 showing receipt of a copy by the BIR on 13 April 2012.

63 General Framework on Farm Handling (GFFH) between Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) and Lapanday Foods Corporation (LFC) dated 23 December 2008.

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Exhibit No.	Description
"P-4"	Petition for Revocation or Cancellation of the Agribusiness Venture Agreement (AVA) Contracrts between HARBCO and LFC.
"P-5"	Decision promulgated on 16 May 2016 by the Department of Agrarian Reform Provincial Adjudication Board on DARAB Case No. XI-2792-DN (UDK-0016-15) entitled "Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO), represented by Pablito G. Romanillos, Chairperson, Petitioner, versus Lapanday Foods Corporation (LFC), Respondent."
"P-6"	Resolution dated 27 September 2016 of the DARAB Provincial Adjudicator on the Motion for Reconsideration filed by LFC in DARAB Case No. XI-2792-DN (UDK-0016-15).
"P-7"	Decision promulgated on 16 February 2017 by the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 19078 (formerly UDK-0016-15, Reg. Case No. XI-2792-DN) dismissing the appeal of LFC.
"P-8"	Resolution promulgated on 13 July 2017 by the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 19078 (formerly UDK-0016-15, Reg. Case No. XI-2792-DN) denying the motion for reconsideration filed by LFC from its Decision dated 16 February 2017.

submit the duly marked exhibits and for failure to present the originals for comparison. In the same Resolution, the Second Division set the presentation of evidence for respondent to 23 September 2020.[65] However, upon petitioner's motion[66], the Court reset the said hearing to 11 November 2020.[67]

During the 11 November 2020 hearing, respondent's intended witness failed to appear due to travel restrictions; thus, the Second Division again reset the initial presentation of evidence for respondent to 03 February 2021, but through videoconference.[68]

On 03 February 2021, respondent presented her lone witness, Revenue Officer (**RO**) I Jessa S. Palarca (**Palarca**), who essentially testified by way of her Judicial Affidavit[69] that: (1) she was assigned at RR No. 19-Davao City, Assessment; (2) she was one of the ROs assigned to review the investigation or examination of petitioner's accounting records for TY 2010 conducted by the ROs from RDO No. 112; (3) Letter of Authority (**LOA**) No. 112-2011-00000108 dated 12 October 2011 was issued to authorize the ROs indicated therein to examine books of account and other accounting records of a taxpayer; (4) she was the one who prepared the Amended FLD/FAN[70], maintaining that petitioner is liable for the deficiency taxes assessed against it as *per* reinvestigation, and FDDA[71], confirming that petitioner is liable for deficiency taxes; and, (5) all the documents that she mentioned and identified are part of the BIR Records.

"P-9"	Notice of Resolution dated 19 September 2018 issued by the Honorable Court of Appeals, former Special Seventeenth Division, declaring CA G.R. SP No. 152904, entitled "Lapanday Foods Corporation vs. Hijo Agrarian Reform Beneficiaries Cooperative, et. al." submitted for resolution.
"P-12"	BIR RDA-RR No. 19 Ruling No. 64-01 Issued by the BIR RR No. 19 dated 25 July 2001 granting HARBCO tax exemption pursuant to Article 61 of the Cooperative Code.

65 Supra at note 61.
66 *See* Petitioner's Motion for Postponement, Division Docket, Volume III, pp. 1129-1131.
67 *See* Resolution dated 22 September 2020, id., p. 1134.
68 *See* Minutes of the Hearing and Order, both dated 11 November 2020, id., pp. 1148 and 1149, respectively.
69 Exhibit "R-17", id., Volume I, pp. 109-120.
70 Supra at note 8.
71 Supra at note 6.

On cross-examination[72], RO Palarca testified, among others, that: (1) the first Letter-Request dated 27 October 2011 for presentation of records was received by Genaro Biol, petitioner's Finance Manager, and a certain Joan Labrador on 27 January 2012; (2) the second and final Letter-Request dated 10 November 2011 for presentation of records does not show anything to indicate who received the same and on what date; (3) after the aforesaid requests for presentation of records, petitioner submitted the requested documents before the service of the PAN[73] and FLD/FAN[74]; (4) on 07 October 2014, the PAN was served on petitioner; and, (5) petitioner did not file any withholding tax returns for TY 2010. Petitioner did not conduct any re-direct examination.[75]

In the Order dated 03 February 2021[76], the Second Division granted respondent twenty (20) days to file the FOE and petitioner the same period to file its comment thereto. However, respondent failed to file the FOE despite due notice[77] and was, thus, the Court deemed the right the same waived and that respondent rested the case accordingly.[78]

In the Resolution dated 18 March 2021[79], the Second Division granted both parties a period of 30 days from notice within which to file their respective memoranda. However, *per* Records Verification dated 09 November 2021[80], both parties failed to file their respective memoranda despite due notice.

Accordingly, the Second Division deemed the case submitted for decision on 06 December 2021.[81]

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72 TSN dated 03 February 2021.
73 Supra at note 10.
74 Supra at note 13.
75 TSN dated 03 February 2021, p. 12.
76 Division Docket, Volume III, p. 1152.
77 *See* Records Verification dated 15 March 2021, id., p. 1153.
78 *See* Resolution dated 18 March 2021, id., p. 1155.
79 Id.
80 Id., p. 1156.
81 *See* Resolution dated 06 December 2021, id., p. 1157.

ISSUES

Based on the Petition for Review[82], Answer[83] and Pre-Trial Briefs[84] submitted by the parties, the issues for this Court's resolution are —

I.
WHETHER THE COURT HAS JURISDICTION OVER THE INSTANT CASE.

II.
ASSUMING THE COURT HAS JURISDICTION OVER THE CASE, WHETHER THE ASSESSMENT FOR DEFICIENCY WITHHOLDING TAXES ARE BARRED BY PRESCRIPTION.

III.
ASSUMING THE COURT HAS JURISDICTION OVER THE CASE AND THE SUBJECT ASSESSMENT IS NOT BARRED BY PRESCRIPTION, WHETHER PETITIONER HIJO AGRARIAN REFORM BENEFICIARIES COOPERATIVE (HARBCO) IS LIABLE TO PAY DEFICIENCY WITHHOLDING TAXES FOR TY 2010.

ARGUMENTS

Petitioner submits that the subject deficiency tax assessment issued by respondent against it for TY 2010 is barred by prescription pursuant to Section 203[85] of the NIRC of 1997, as amended.

Petitioner claims that respondent's right to assess it for deficiency WTC and EWT for TY 2010 had already prescribed. Since it received the PAN only on 07 October 2014, which is four (4) years after the returns in question were filed, petitioner insists that the deficiency withholding taxes assessed against it for TY 2010 are null and void for

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82 Supra at note 1.
83 Supra at note 23.
84 Supra at notes 25 and 26.
85 **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

having been issued beyond the three-year prescriptive period under Section 203[86] of the NIRC of 1997, as amended.

Even assuming that the assessment for deficiency withholding tax against it for TY 2010 have not prescribed, petitioner argues that the subject assessment should nonetheless be invalidated for lack of factual and legal bases.

Respondent, on the other hand, alleges in the Answer[87] that petitioner failed to timely file its appeal before this Court; thus, the assessment in question already became final, executory, and demandable.

<u>RULING OF THE COURT</u>

THE COURT HAS NO JURISDICTION OVER THE CASE.

At the outset, it bears emphasis that the Court of Tax Appeals (**CTA**), being a court of special and limited jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[88] Section 7(a)(1) of RA 1125[89], as amended, provides:

> ...
> **Sec. 7.** *Jurisdiction*. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **<u>Decisions</u>** of the Commissioner of Internal Revenue in cases involving **<u>disputed assessments</u>**, 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[.][90]
>
> ...

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86 Id.
87 Supra at note 23.
88 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.
89 Supra at note 3.
90 Emphasis and underscoring supplied.

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[91]

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

> ...
>
> **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[.] ...
>
> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from <u>receipt</u> 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.**[92]
>
> ...

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[91] *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

[92] Italics in the original text, emphasis and underscoring supplied.

The aforequoted Section 228 is implemented by Revenue Regulations (**RR**) No. 12-99[93], as amended by RR No. 18-2013[94], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides the taxpayer's options on disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> Sec. 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation 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.
>
> ...
>
> For request 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 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. ...
>
> ...

93 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.

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

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **<u>(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision</u>**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may <u>either</u>: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such

> decision, are mutually exclusive and the resort to one bars the application of the other.[95]
>
> ...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[96] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[97], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> **1. If the protest is wholly or partially denied by the CIR *or* his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules in the following wise:

> ...
> To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA.** A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized

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95 Italics in the original text, emphasis and underscoring supplied.
96 G.R. No. 208731, 27 January 2016; Citation omitted, italics and underscoring in the original text and emphasis supplied.
97 G.R. No. 221780, 25 March 2019.

representative's failure to act may be appealed to the CTA. **There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.**[98]

...

Based on the foregoing provisions and jurisprudence, in cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given two (2) alternative remedies, to either: (1) appeal to the CTA within 30 days from the date of receipt of the representative's decision; or, (2) to elevate his protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal."

Thereafter, if the taxpayer's administrative appeal is not acted upon by the CIR within 180 days from the filing of the protest, the concerned taxpayer may either: (1) appeal to the CTA within 30 days after the expiration of the said 180-day period; or (2) await the final decision of the CIR on the disputed assessment, and appeal such final decision to the CTA within 30 days from receipt of a copy thereof.

As culled from the records, the following are the pertinent dates in determining the timeliness of the Petition for Review:

Date	Action
03 February 2015[99]	Petitioner received the FLD/FAN dated 27 January 2015, signed by then OIC-RD Geraldino.
26 February 2015[100]	Respondent received petitioner's Protest dated 25 February 2015, requesting for reinvestigation of the FLD/FAN addressed to then OIC-RD Geraldino of RR No. 19-Davao City, filed within the 30-day reglementary period.
10 March 2016[101]	Petitioner received the Amended FLD/FAN dated 02 March 2016, signed by then RD Aguila.
08 April 2016[102]	Respondent received petitioner's Protest dated 28 March 2016, ***requesting a reinvestigation*** of the Amended FLD/FAN addressed to then RD Aguila of RR No. 19-Davao

98 Supra at note 96; Emphasis supplied.
99 Supra at note 13.
100 Supra at note 14.
101 Supra at note 8.
102 Supra at note 7.

Date	Action
	City, filed within the 30-day reglementary period, ***together with submission of an additional document.***[103]
05 October 2016	**End of the 180-day period from the submission of complete documents.**
03 October 2017[104]	Petitioner received the FDDA dated 22 September 2017, signed by then OIC-RD Balatero.
02 November 2017	**End of the 30-day period to file an administrative appeal before the CIR or a judicial appeal before this Court.**
02 November 2017[105]	Petitioner filed an MR before the CIR within the 30-day reglementary period.
02 April 2018[106]	Petitioner filed a Petition for Review before this Court.

In this case, and as mentioned earlier, petitioner received on 03 October 2017 an FDDA[107], which was issued by then OIC-RD Balatero, respondent's duly authorized representative. Petitioner opted to file an administrative appeal before respondent, through an MR[108] on the FDDA, on 02 November 2017. Subsequently, however, due to respondent's inaction on the said administrative appeal, petitioner filed a Petition for Review[109] before this Court on 02 April 2018.

Since respondent has not yet acted on petitioner's administrative appeal, for this Court to exercise jurisdiction over the instant Petition for Review[110], the appeal must have been brought within 30 days after the expiration of the 180-day period for respondent or her duly authorized representative to act on petitioner's Protest[111] against the Amended FLD/FAN.[112]

To be clear, the 180-day period referred to in Section 228[113] of the NIRC of 1997, as amended, and in Section 3.1.4[114] of RR No. 12-99[115], as

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103 BIR Certificate of Registration, Annex "A" to Protest dated 28 March 2016, Division Docket, Volume II, p. 708.
104 Supra at note 6.
105 Supra at note 19.
106 Supra at note 1.
107 Supra at note 6.
108 Supra at note 19.
109 Supra at note 1.
110 Supra at note 1.
111 Supra at note 7.
112 Supra at note 8.
113 Supra at p. 15.
114 Supra at pp. 16-18.

amended by RR No. 18-2013[116], is confined only to the period within which either the CIR or her duly authorized representative may act on the initial protest against the FLD/FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal.

In line with the rules set forth in RR No. 12-99[117], as amended by RR No. 18-2013[118], and the ruling in *PAGCOR* above-quoted[119], the proper remedy for petitioner would have been to file a Petition for Review before this Court within 30 days from receipt of the FDDA[120] on 03 October 2017, or until **02 November 2017** (as the FDDA already served as respondent's denial of its Protest[121] against the Amended FLD/FAN[122]). Unfortunately, petitioner opted to instead file an MR[123] on the FDDA with respondent on even date. Then, without waiting for any action from respondent, petitioner filed the instant Petition for Review[124] before this Court on 02 April 2018.

This Court cannot countenance petitioner's theory that it has another 180-day period within which to file a judicial appeal before this Court *sans* any decision from the CIR.

In a very recent case of *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. Commissioner of Internal Revenue*[125], the Supreme Court held that there is no new or separate 180-day period will start to run when the taxpayer appeals to the CIR, to wit:

115 Supra at note 93.
116 Supra at note 94.
117 Supra at note 93.
118 Supra at note 94.
119 Supra at p. 18.
120 Supra at note 6.
121 Supra at note 7.
122 Supra at note 8.
123 Supra at note 19.
124 Supra at note 1.
125 G.R. No. 258101, 19 April 2022 (Resolution); Emphasis supplied.

> ...
>
> ... Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner on Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. **However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.** As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. "**It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.**"
>
> ...

As can be gleaned from the foregoing pronouncement, there is only one (1) 180-day period, *i.e.*, the period counted from the filing of the protest or the submission of the required documents. Accordingly, if an authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR has the **remainder of the 180-day period within which to act**. And if there is no action, the taxpayer may appeal to this Court within **30 days after the lapse of the said remaining period**. It also follows that if the taxpayer **waits for the decision of the CIR's representative and the same is issued after the lapse of the 180-day period**, the same may be appealed to this Court or to the CIR. In case of the latter, **the 180-day period is no longer a consideration** and the only remedy for the taxpayer is **to wait for the CIR's decision before elevating its case to the CTA, if the same is not favorable.**

Considering that the 180-day period has already lapsed (*i.e.*, on 05 October 2016, reckoned from the filing of petitioner's Protest[126] against the Amended FLD/FAN[127] on 08 April 2016) by the time

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[126] Supra at note 7.
[127] Supra at note 8.

petitioner received on 03 October 2017 the FDDA[128] issued by respondent's representative and petitioner opted to file an administrative appeal before respondent (instead of filing a judicial appeal before this Court) within 30 days from receipt thereof, the only remedy available to petitioner at this point is to wait for respondent's decision before filing an appeal before this Court.

Basic is the rule that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint.[129] Thus, the limits of this Court's jurisdiction is unaffected by petitioner's erroneous interpretation of the law.

In *Glynna Foronda-Crystal v. Aniana Lawas Son*[130], the Supreme Court aptly stated - "[i]n **law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.**" In thus losing our authority to review the subject deficiency assessment, this Court sees no relevant need to further tackle the parties' other issues as these will not change the outcome of the case.

WHEREFORE, premises considered, the present Petition for Review filed on 02 April 2018 by petitioner Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[128] Supra at note 6.
[129] *Editha Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.
[130] G.R. No. 221815, 29 November 2017.

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice