CTA Form No. 8

21-000384-0038

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10631

LI-SON TRANSPORT SERVICE INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE THE SOLICITOR GENERAL
134 Amorsolo Street, LegaZpi Village, Makati City

ATTY. LEONARD BRYAN DG. GONZALES
ATTY. LUIS Z. CELESTINO
Bureau of Internal Revenue
Legal Division Revenue Region No.5
5th Floor, BIR Legal Division & Executive Building
No. 140 Bo. Kalaanan, Brgy. 86, EDSA, Caloocan City 1400

GALIAS & RIVERA LAW OFFICES
3/F Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City 1605

GREETINGS:

You are hereby notified by these presents that on **July 23, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 26, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LI-SON TRANSPORT SERVICE INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10631

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUL 23 2024 1:35PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Li-son Transport Service Inc. (**petitioner**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8[3] in

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1 Filed on 26 October 2021, Division Docket, pp. 6-17.

2 SEC. 3. *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 PROCEDURE IN CIVIL CASES.

relation to Section 3(a)(1)[4], Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays that judgment be rendered ordering the cancellation of respondent's assessments against petitioner for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), and improperly accumulated earnings tax (**IAET**) in the total amount of ₱5,536,177.47 for the calendar year (**CY**) 2018, inclusive of interest, surcharges, and compromise penalties, as laid out in the Formal Letter of Demand with Details of Discrepancies and Assessment Notices (**FLD/FAN**). It likewise seeks the cancellation of the Warrant of Distraint and/or Levy (**WDL**) issued in relation thereto.

PARTIES TO THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It holds its principal office at 79 Escoda Bend, San Rafael, Navotas City.[6]

Respondent, on the other hand, is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**). He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City.[7]

FACTS OF THE CASE

On 24 September 2019, the BIR issued a Letter of Authority (**LOA**) with Reference No. LOA-026-2019-00000568[8] (SN: eLA201600060188) through then Regional Director (**RD**) of Revenue Region No. 5 -

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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[.]

5 JURISDICTION OF THE COURT.

6 Paragraph 1, I. Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 158.

7 Par. 2, I. Joint Stipulation of Facts, JSFI, id.

8 Exhibit "R-1", BIR Records. p. 1.

Caloocan City, Ma. Gracia B. Javier. The LOA authorized Revenue Officer Anita Mariñas (**RO Mariñas**) and Group Supervisor Rosita Quito (**GS Quito**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2018 to 31 December 2018. On 26 September 2019, petitioner received a copy of the said LOA.[9]

On 13 August 2020, petitioner received an undated Notice for Informal Conference (**NIC**) with an attached Computation of Deficiency Taxes issued by Revenue District Officer (**RDO**) Aldo B. Esmeña.[10]

On 06 November 2020, petitioner received a Preliminary Assessment Notice[11] (**PAN**) with Details of Discrepancies dated 15 October 2020, informing it of its alleged IT, VAT, EWT, and IAET deficiencies amounting to ₱5,468,501.22, inclusive of interest, surcharges, and compromise penalties, to wit:

Tax Type	Basic Tax Due	Surcharge	Interest	Total Due
IT	₱2,404,673.64	-	₱420,817.89	₱ 2,825,491.53
VAT	2,027,506.28	-	408,137.01	2,435,643.29
EWT	11,739.06	-	2,406.51	14,145.57
IAET	19,804.09	₱4,951.02	3,465.72	28,220.83
Compromise Penalties	-	-	-	165,000.00
Total	**₱4,463,723.07**	**₱4,951.02**	**₱834,827.13**	**₱5,468,501.22**

Thereafter, on 22 January 2021, petitioner received the FLD/FAN dated 15 January 2021.[12] It demanded payment of the same basic tax deficiencies as stated in the PAN, this time totaling ₱5,536,177.47 (as adjusted for incremental interest and with surcharges deleted), broken down as follows:

Tax Type	Basic Tax Due	Interest	Total Due
IT	₱2,404,673.64	₱456,887.99	₱2,861,561.63
VAT	2,027,506.28	439,274.51	2,466,780.80
EWT	11,739.06	2,578.09	14,317.15
IAET	19,804.09	8,713.80	28,517.89

9 Id.
10 Exhibit "R-11-B", Division Docket, p. 165; BIR Records. pp. 108-110.
11 Exhibit "R-12", Division Docket, p. 92.
12 Exhibit "R-13", BIR Records, pp. 164-173.

Compromise Penalties	-	-	165,000.00
Total	**₱4,463,723.07**	**₱907,453.40**	**₱5,536,177.47**

On 15 February 2021, petitioner sent a letter dated 25 January 2021 to the BIR, said letter was denominated as a "Request for Reinvestigation".[13] Subsequently, on 07 July 2021, respondent served WDL No. RR5-2-AMS-DA-07-06-21-2728(26) dated 06 July 2021 upon petitioner.[14]

On 26 October 2021, petitioner filed the instant Petition for Review.[15] The case was initially raffled to this Court's Second Division.

PROCEEDINGS BEFORE THIS COURT

On 08 November 2021, the Court served Summons[16] on respondent, requiring the latter to submit an Answer within thirty (30) days from service. Respondent received the said Summons on 17 November 2021.

On 14 December 2021, respondent filed a "Motion for Extension of Time to File Answer to Petition for Review with Entry of Appearance as Counsel"[17], requesting an additional period of 30 days to file an Answer. The Second Division granted the same in its Order dated 03 January 2022, giving respondent 30 days from 17 December 2021, or until 16 January 2022, to file an Answer.[18]

Thereafter, on 08 February 2022, respondent filed a motion "*Ex-Parte* Manifestation & Compliance"[19] and likewise transmitted the BIR Records for this case.

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13 Exhibit "P-5", Division Docket, p. 31; BIR Records, p. 182.
14 Exhibit "P-2", Division Docket, p. 21.
15 Supra at note 1.
16 Division Docket, p. 39.
17 Id., pp. 41-43.
18 Id, p. 109.
19 Id, p. 110.

On 15 February 2022, respondent filed his or her "Answer with Special Affirmative Defenses"[20] (**Answer**). Therein, respondent cited the following special and affirmative defenses: (1) this Court has no jurisdiction to entertain petitioner's appeal for being filed out of time; (2) this Court has no jurisdiction to entertain petitioner's appeal for being premature; and, (3) the instant case should be dismissed for lack of cause of action and/or failure to state a cause of action.

On 17 February 2022, the Second Division issued a Notice of Pre-Trial Conference[21], and set the case for pre-trial on 23 March 2022. Accordingly, on 11 March 2022, ahead of the Pre-Trial Conference, respondent filed his or her Pre-Trial Brief.[22] On the same day, respondent filed a "Motion to Defer Pre-Trial Conference and/or to Suspend Proceedings"[23], asking the Second Division to suspend the proceedings pending final resolution of the jurisdictional issues that respondent had raised in his or her Answer.

Meanwhile, on 18 March 2022, petitioner filed its Pre-Trial Brief.[24]

In a Resolution dated 22 March 2022[25], the Second Division denied respondent's prayer for the dismissal of the present case based on the special affirmative defenses raised in the Answer. It likewise denied respondent's "Motion to Defer Pre-Trial Conference and/or to Suspend Proceedings" for lack of merit.

On 23 March 2022, during the Pre-Trial Conference[26], the parties were directed to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 16 May 2022,

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20 Id., pp. 44-53.
21 Id., pp. 112-113.
22 Id., pp. 117-122.
23 Id., pp. 123-126.
24 Id., pp. 127-133.
25 Id., pp. 135-140.
26 See Minutes of the Hearing and Order, both dated 23 March 2022, id., pp. 141 and 142, respectively.

pursuant to Parts I.1.A[27] and II[28] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals. In relation thereto, the Second Division suspended the proceedings for 30 days in its Resolution dated 30 March 2022.[29]

Later, the parties decided not to have their case mediated by the PMC-CTA.[30] On 06 June 2022, they submitted their letter to the Court manifesting "No Agreement to Mediate".[31] In its Resolution dated 21 June 2022[32], the Second Division then set the case for Pre-Trial anew on 31 August 2022.

During the Pre-Trial proper[33], the parties were ordered to file their Joint Stipulation of Facts and Issues[34] (**JSFI**). Accordingly, on 28 September 2022, the parties filed their JSFI.[35] On 30 September 2022, in compliance with further directives in the Second Division's same Order dated 31 August 2022[36], respondent filed a "Compliance with Submission" dated 28 September 2022[37], attaching thereto the Judicial Affidavit of his or her witness Rosita B. Quinto.

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27 I. *Coverage*
I.1. The following cases may be referred to mediation:
A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]

28 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

29 Division Docket, p. 144.

30 Id., p. 145.

31 Id.

32 Id., p. 147.

33 See Minutes of the Hearing and Order, both dated 31 August 2022, id., pp. 148 and 149-150, respectively.

34 Id.

35 Id., pp. 158-167.

36 Supra at note 33.

37 Division Docket, pp. 168-179.

On 20 October 2022, the Second Division issued a Pre-Trial Order[38], thereby terminating the pre-trial.

On 26 October 2022, trial ensued where petitioner presented and offered the testimony of its lone witness, Herbert S. Sison (**Sison**), petitioner's President and authorized representative.[39]

On the witness stand, Sison identified the exhibits he had referred to in his Judicial Affidavit.[40] These exhibits mainly dealt with the BIR documents issued to petitioner over the course of the examination of its books (from the LOA to the WDL). Relative thereto, he likewise testified as to the events that transpired prior to the filing of the instant Petition and his role in the proceedings leading to the eventual issuance of the WDL against petitioner. He attested that petitioner caused the filing of the present Petition as the FLD issued against it failed to indicate a definite amount of tax liability, a demand to pay tax liabilities, a due date for the payment, and a fixed amount of interest due.[41] He also proffered proof of his position as petitioner's President and authorized representative.

During his cross-examination, Sison confirmed that he had no businesses other than that under the name of petitioner located in Navotas. Responding to respondent's counsel observation that his Judicial Affidavit indicates a business address in Manila, he clarified that the same was his home address (notwithstanding that this was represented in his Judicial Affidavit as a business address). Respondent's counsel also inquired about Sison's signature on the BIR's copy of the PAN. Sison confirmed that it was indeed his signature reflected thereon, after the parties discerned between the BIR's copy and that of petitioner's, the latter of which was not similarly signed.[42]

As to petitioner's participation in the administrative proceedings, Sison declared that he filed a protest letter asking for a reinvestigation of the PAN issued against petitioner. He further stated that his employee, Rudy De Vergara (**De Vergara**) received the LOA and WDL issued in the

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38 Id., pp. 226-235.
39 Supra at note 6.
40 Exhibit "P-6", Division Docket, pp. 32-38.
41 Id.
42 TSN dated 26 October 2022, pp. 7-22.

present case, though he made a reservation against granting De Vergara the authority to receive the LOA. As the cross-examination concluded, respondent's counsel questioned Sison's personal knowledge of the LOA when its originating Revenue District Office, as he represented in his Judicial Affidavit, did not match the actual issuing office, as indicated on the face of the LOA. However, Sison claimed to be unable to recall the pertinent details accurately.[43]

In the redirect examination that followed, Sison testified that the FLD did not indicate a due date. He further confirmed that he filed a protest against the PAN after he received the FLD. Finally, in denying De Vergara's authority to receive correspondences addressed to petitioner, he clarified that it was he and his accountant that possessed the necessary authority.[44]

Finally, during the re-cross examination, he insisted that he filed a protest letter to the FLD although the same was not presented to the Court and was, according to him, presently in the hands of his accountant. When questioned as to whether he has settled his CY 2018 tax liabilities, Sison replied in the affirmative.[45]

On 07 November 2022, petitioner filed its Formal Offer of Evidence[46] (**FOE**) consisting of Exhibits "**P-1**" to "**P-6-A**"[47], inclusive of sub-markings. On 15 November 2022, respondent filed his or her Comment thereto.[48] In its Resolution dated 17 January 2023[49], the Second Division admitted all of petitioner's offered exhibits. In the same Resolution, respondent's evidence was set to be presented on 08 February 2023.

43 Id.

44 Id., pp. 22-24.

45 Id., pp. 25-26.

46 Id., pp. 239-245.

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Exhibit	Description
"P-1"	Secretary's Certificate dated October 2021.
"P-2"	WDL No. RR5-2-AMS-DA-07-06-21-2728(26) dated 06 July 2021.
"P-3"	PAN with Details of Discrepancies dated 15 October 2020.
"P-4"	FLD with Details of Discrepancies dated 15 January 2021.
"P-5"	Protest / Request for Reinvestigation dated 25 January 2021.
"P-6"	Judicial Affidavit of Witness Herbert Sison dated 26 October 2021.
"P-6-A"	Signature of Herbert Sison on the Judicial Affidavit dated 26 October 2021.

48 Respondent's "Comments/Objections (to the Petitioner's Formal Offer of Evidence)", Division Docket, pp. 246-249.

49 Id., pp. 254-255.

During the hearing of 08 February 2023, respondent's counsel manifested that respondent will no longer present GS Quito as witness. RO Mariñas then took the witness stand as respondent's lone, remaining witness.[50]

RO Mariñas testified, by way of her Judicial Affidavit that she served as RO II at Revenue District Office No. 25A, West Bulacan from 08 January 2010 to 08 June 2021. She confirmed that LOA No. 026-2019-00000568 dated 24 September 2019 was issued to her and GS Quito for the examination of petitioner's accounting records for CY 2018. She recalled the circumstances surrounding the examination, including her personal service of the LOA (together with the Checklist of Requirements) on 26 September 2019 on De Vergara in the latter's capacity as Staff/Checker and authorized representative at petitioner's business premises. She likewise detailed that she conducted the audit examination based on best evidence obtainable and that she prepared Revenue Audit Report on petitioner's deficiency assessments for the subject CY. She likewise explained that the assessed deficiency taxes have become final, executory and demandable after petitioner failed to respond to the FLD or settle the deficiency taxes, prompting the BIR to pursue collection efforts.[51]

On cross-examination, RO Mariñas clarified that her service of the LOA to De Vergara followed after confirming that he was the only person on the premises and was petitioner's employee (by inspecting the latter's Identification Card). Nevertheless, she confirmed that she did not retained any documentary proof of the same nor had she accomplished an Affidavit of Service (though she insisted that the LOA in the records bears De Vergara's signature). In relation to the other procedures observed during the BIR's examination, RO Mariñas recounted that the "First Request for Presentation of Records"[52] (**First Request**) was mailed, unlike the "Second and Final Request for Presentation of Records"[53] (**Second Request**), NIC, PAN, and FLD/FAN which were personally served. Regarding the particulars of the FLD/FAN, she expounded that (1) the Details of Discrepancies accompanying the FLD/FAN did not indicate a due date; (2) the body of the FLD included a request for the

[50] See Minutes of the Hearing and Order, both dated 08 February 2023, id., pp. 256 and 257-258, respectively.
[51] Exhibit "R-15", id., pp. 57-63.
[52] Exhibit "R-3", BIR Records, p. 21.
[53] Exhibit "R-4", id., p. 23.

payment of the deficiency taxes; and, (3) the interest computation in the FLD does not reflect the final, actual interest, but is to be adjusted upon payment.[54]

During the redirect examination, RO Mariñas pointed out that the first page of the FLD bears a due date of 15 February 2024. She believed that this sufficed such that the due date need not be reflected in the remaining pages. She further highlighted that though no Affidavit of Service of the LOA was issued, the same was not a strict requirement; in its place, the name (and signature) of De Vergara on the bottom portion of the LOA operated as proof of its service. She further laid out that the NIC and Second Request were personally served on petitioner's President, Sison, and De Vergara, respectively. Petitioner's counsel clarified that the First Request was sent to petitioner *via* registered mail in late 2019.[55]

Finally, during the re-cross examination, while RO Mariñas admitted that she did not sign and send the FLD, she confirmed that it was her who prepared the same. On another note, she also confirmed that she went to petitioner's premises to serve the NIC.[56]

On 21 February 2023, respondent filed his or her FOE comprised of Exhibits "**R-1**" to "**R-15-A**", inclusive of sub-markings[57], with petitioner filing its comment thereon on 09 March 2023.[58]

In the Resolution dated 26 May 2023[59], the Second Division admitted all of respondent's offered exhibits. The same Resolution ordered the parties to file their respective memoranda.

On 29 May 2023, pursuant to Administrative Circular No. 01-2023[60] the Second Division issued a Notice[61] transferring the instant case to the First Division. Thereafter, on 07 July 2023, respondent filed his or her

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54 TSN dated 08 February 2023, pp. 6-23.
55 Id., pp. 23-26.
56 Id., pp. 27-28.
57 Division Docket, pp. 259-263.
58 Petitioner's "Comments/Objections (to Respondent's Formal Offer of Evidence/Exhibits dated 21 February 2023)", id., pp. 264-269.
59 Id., pp. 272-273.
60 Reorganizing the Divisions of the Court.
61 Division Docket, p. 274.

memorandum.[62] Meanwhile, on 25 July 2023, the Court received petitioner's memorandum[63], which the latter filed by registered mail on 10 July 2023.

In its Resolution dated 26 July 2023[64], the First Division submitted the case for decision.

ISSUES

An examination of the records yields the following issues for this Court's determination —

I.
WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW;

II.
WHETHER THE LETTER OF AUTHORITY (LOA) ISSUED TO PETITIONER LI-SON TRANSPORT SERVICE, INC. IS VOID FOR HAVING BEEN IMPROPERLY SERVED;

III.
WHETHER THE FORMAL LETTER OF DEMAND (FLD) ISSUED TO PETITIONER LI-SON TRANSPORT SERVICE, INC. IS VOID FOR ITS FAILURE TO INDICATE (A) A DEMAND TO PAY TAX LIABILITIES, (B) THE DUE DATE WHEN THE TAXES SHALL BE PAID, AND (C) THE INTEREST DUE WAS NOT FIXED AND SET THEREIN; AND,

IV.
WHETHER PETITIONER LI-SON TRANSPORT SERVICE, INC. IS LIABLE TO PAY THE ASSESSED DEFICIENCY TAXES FOR CALENDAR YEAR (CY) 2018.

ARGUMENTS

In support of its petition, petitioner argues that the LOA authorizing the examination (from where its alleged deficiency taxes for CY 2018 arose) is void as it had not been personally served upon any of its duly authorized representatives. It further avers that there must be a

62 Id., pp. 275-291.
63 Id., pp. 293-313.
64 Id., p. 315.

showing of impossibility of personal service. According to petitioner, respondent failed to meet this criterion when the audit team issued the LOA to an individual whose authority to receive the same was not proven.

Petitioner also contends that the FLD is void for respondent's failure to demand payment of tax liabilities, to indicate a definite amount of tax liability, to indicate the due date for the payment of the taxes, and to fix the interest therein.

On the other hand, respondent reiterates the arguments in his or her Answer.

Firstly, as to the issue on jurisdiction, respondent insists that the instant petition must be dismissed for being premature. Relying on the pronouncements of the Supreme Court in the cases of *Commissioner of Internal Revenue v. Leonardo S. Villa, et al.*[65], *Ker & Company Ltd. v. The Court of Tax Appeals, et al.*[66], and *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*[67], respondent posits that the period to invoke judicial review must be reckoned from the receipt of CIR's decision on the disputed assessment. Pointing to the BIR Records, respondent insists that there was no valid protest or request for reinvestigation as petitioner filed its supposed protest against the PAN, not the FLD.

Alternatively, respondent assails this Court's jurisdiction to entertain the Petition for Review as the same had been filed out of time. Respondent asserts that petitioner should reckon the date of filing of its Petition for Review from the date of its receipt of the FLD and not of the WDL.

Lastly, respondent argues vehemently that even assuming that this Court has jurisdiction over the present case, the collection efforts were due to the assessment attaining finality, thus had become due and demandable. Relying on Sison's testimony, respondent insists that the FLD clearly indicated a definite amount of tax liability, demanded

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65 G.R. No. L-23988, 02 January 1968.
66 G.R. No. L-12396, 31 January 1962.
67 G.R. No. 239464, 10 May 2021.

petitioner to pay its tax liabilities, and provided a due date when the deficiency taxes should be paid.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS NO JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it bears stressing that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[68]

Section 7(a)(1) of Republic Act (**RA**) No. 1125[69], as amended by RA 9282[70], 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[.][71]
>
> ...

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68 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

69 AN ACT CREATING THE COURT OF TAX APPEALS.

70 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.

71 Italics in the original text, emphasis and underscoring supplied.

The above provision is implemented by Section 3(a)(1), Rule 4 of the RRCTA, which provides:

> ...
>
> 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[.][72]
>
> ...

As can be gleaned from the foregoing, this Court's jurisdiction is contingent upon a prior dispute (of the assessment) by the taxpayer. This necessitates the filing of a **valid protest** with the BIR within the reglementary period of 30 days following receipt of the assessment, as laid down under Section 228 of the NIRC of 1997, as amended:

> ...
>
> 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**

72 Emphasis supplied and italics in the original text.

> **manner as may be prescribed by implementing rules and regulations**[.][73]
>
> ...

To implement the foregoing remedies afforded by the law, particularly the form and manner of filing of requests for reconsideration or reinvestigation, the BIR has issued Revenue Regulations (**RR**) No. 12-99[74], as amended by RR No. 18-2013[75], which provides:

> ...
> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*
> ...
>
> 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 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 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.***

[73] Emphasis supplied and italics in the original text.

[74] 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. Issued on 06 September 1999.

[75] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment. Issued on 28 November 2013.

> If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.
>
> If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.[76]
>
> ...

Applying the foregoing rules, the Supreme Court, in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*[77], emphatically underscored the paramount importance of a valid protest in establishing this Court's jurisdiction, to wit:

> ...
>
> Petitioner argues that the Court of Tax Appeals had no jurisdiction over respondent's Petition for Review because the assessment had attained finality before then.
>
> Section 228 of the National Internal Revenue Code states the procedure in protesting an assessment:
>
> ...
>
> Upon receipt of the audit results/assessment notices for Letter of Authority No. 116-2013-00000017, respondent, through Lee, replied with an April 29, 2015 letter which reads:
>
>> This is to submit copies of our protest to the Audit Result/Assessment Notices for Audit Result/Assessment Notices for Letter of Authority LOA-116-2013-00000017 for Citysuper, Incorporated TIN No.: 205-412-358 for the taxable year 2011.

---

[76] Emphasis supplied and italics in the original text.
[77] G.R. No. 239464, 10 May 2021.

> Please be informed that we are in the process of compiling the necessary documentation to support our protest to said assessments, and will be requiring additional time to accomplish this.

Petitioner did not consider the April 29, 2015 letter as a valid protest, as it said in its July 13, 2015 response to respondent:

> The requisite information and conditions prescribed under the provisions of Section 6 in relation to Section 228 of the Tax Code, as amended, as implemented by Revenue Regulations No. 18-2013, for filing a valid protest were not met, as enumerated hereunder, to wit:
>
> Your letter dated, April 29, 2015, failed to indicate/state the following:
>
> **a. Name and address of the taxpayer;**
>
> **b. The nature of the protest, since the letter merely contained a statement that the subject taxpayer was in the process of compiling documents for eventual presentation to the bureau;**
>
> **c. The assessment number, date of receipt of assessment notice and formal letter of demand;**
>
> **d. The itemized statement of findings to which the taxpayer agrees and schedule of adjustments to which the taxpayer does not agree;**
>
> **e. A statement of the facts, applicable law, rules and regulations or jurisprudence in support of the protest.**
>
> Premised on the foregoing, a collection letter shall be issued against Citysuper, Inc., calling for payment of the aforesaid deficiency assessments on Income Tax, VAT, Withholding Tax on Compensation, EWT and DST for taxable year 2011.

In particular, Arriola, the revenue officer, said that the April 29, 2015 letter failed to state the protest's nature, the date of the assessment notice, and the applicable law, rules and regulations, or jurisprudence on which the protest was based. Thus, to petitioner, respondent's failure to properly protest the assessment meant that it had attained finality.

Section 3.1.14 of Revenue Regulations No. 18-2013, amending Revenue Regulations No. 12-99, states what constitutes a valid protest:

> 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 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 the 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 void and without force and effect.***
>
> ...
>
> **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 failed 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.
>
> Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.
>
> While respondent's declaration that it was "in the process of compiling the necessary documentation to support [its] protest to said assessments" could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.
>
> Section 228 of the National Internal Revenue Code 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." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.[78]
>
> ...

The foregoing judicial precedent clearly provides that to validly protest against a FLD/FAN, the following must be stated in the protest: (*i*) the nature of the 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. Failure to comply with these mandatory prerequisites renders the protest void and devoid of legal force and effect.

In the instant case, it is undisputed that petitioner's President, Sison, received respondent's FLD/FAN on 22 January 2021. Within 30 days therefrom, on 25 January 2021, petitioner filed the following one-page protest[79]:

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[78] Citations omitted, emphasis supplied and italics in the original text.

[79] Exhibit "P-5", Division Docket, p. 31; BIR Records, p. 182.

...

LI-SON TRANSPORT SERVICE INC.
79 Escoda Bend San Rafael, Navotas City

January 25, 2021

Dir. GERRY DUMAYAS
Regional Director
Bureau of Internal Revenue
BIR RR-5, Caloocan City

Subject: Request for Reinvestigation/LA No. ELA201600060188/10A-026-2019-00000568

Dear Dir. DUMAYAS;

I, **HERBERT S. SISON**, President of **LI-SON TRANSPORT SERVICES INC.**, with business TIN No. 008-793-571-000 requests from your Bureau for the much needed Reinvestigation in the **Preliminary Assessment Notice** you sent to me dated October 15, 2020 for the taxable year 2018.

I humbly submit that the stringent application for procedural rules may be relaxed to meet the ends of substantial justice.

My protest is based pursuant to **RR NO. 12-99**, as amended by **RR No. 18-2013** in relation to **RMC No. 39-2013** and other applicable Revenue Memorandums, Rules and Regulations.

I have reason to believe that the assessment is lacking in legal and/or factual basis and can be disputed by sufficient and competent evidence if a reinvestigation sought for is granted.

It is rather inconceivable that I, as alleged failed to subject some expenses to expanded withholding tax in Violation to Sec. 34 (K) of the Tax Code and our other expenses were disallowed Pursuant to Section 6 (B) of the same Tax Code.

It may not be amiss to stress that at this point in time, your assessment is whimsical, arbitrary and confiscatory hence, illegal and without basis.

It is respectfully submitted that the taxpayer is entitled to an ample opportunity to refute the imprecise averments of the Bureau's Assessment and in turns present the correct assessment and documents to support the same.

Our review and ratiocination based on the entire records yields the inescapable conclusion that our records are correct unless disputed are more convincing evidence by the Bureau.

Administrative issuances must not override but must remain consistent and in harmony with the law they seek to apply and implement (Commission of Internal Revenue VS CA, 240 scra 368).

Taxpayer and government be given equal opportunities to avail of remedies under the law (Commission of Internal Revenue VS CTA, 234 SCRA 348)

WHEREFORE, it is respectfully prayed to grant me of the **REINVESTIGATION** in order to meet the ends of Substantial Justice.

LI-SON TRANSPORT SERVICE INC.

By:

(Sgd.)
HERBERT S. SISON
(President)
79 Escoda Bend, San Rafael,
Navotas City

...

Following the foregoing, and notwithstanding its prayer for reinvestigation, petitioner did not make any subsequent submissions of documentary evidence. Notably, this, by itself, already results in the finality of the assessment in accordance with Section 228[80] of the NIRC of 1997, as amended.

Further, petitioner's "protest" to the FLD/FAN is riddled with several infirmities thus, fundamentally flawed. One glaring omission is the absence of any reference to the crucial date of receipt of the FLD/FAN. The protest also fails to delineate an itemized statement of findings that petitioner agrees with, nor does it provide a corresponding schedule of adjustments it contests. These omissions make it impossible to discern the specific findings petitioner accepts and which adjustments it disputes. Finally, the document is devoid of a factual

[80] SEC. 228. *Protesting of Assessment.* — ...

...

... Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

narrative supported by citations to applicable laws, regulations, or relevant jurisprudence.

It is clear that petitioner's protest fell short of the requirements of a valid protest. Consequently, there is no disputed assessment to speak of. Evidently, even if this Court relaxes the rules and overlooks petitioner's reference to the PAN as the subject of its protest, the protest itself is still invalid.

It bears noting that when a taxpayer files a petition for review before this Court without validly contesting the assessment with the CIR, the appeal is premature, and the Court of Tax Appeals has no jurisdiction.[81]

Assuming that the Court was able to successfully acquire jurisdiction, the petition will still fail.

THE LETTER OF AUTHORITY (LOA) WAS VALIDLY SERVED ON PETITIONER.

In its Memorandum, petitioner posits that respondent's LOA is void for the latter's failure to *properly* serve the LOA.[82] Petitioner relies on its assertion that De Vergara, recipient of the LOA, is not an authorized person to receive such correspondences on behalf of petitioner.

Petitioner's contention deserves scant consideration.

At the onset, it is important to note the undisputed fact that petitioner received the LOA before the commencement of the audit. Thus, it was sufficiently apprised of the identities of the authorized revenue officers who were to conduct the audit (RO Mariñas and GS Quito). Petitioner acknowledged receipt of the LOA in its Petition for Review[83], thusly: 7

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[81] *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division*, supra at note 77.
[82] Par. 1, IV. Arguments, Petitioner's Memorandum, Division Docket, p. 298.
[83] Petition for Review, Division Docket, p. 9; Emphasis supplied.

> ...
>
> 11. **Respondent issued to Petitioner a Letter of Authority (LOA) under electronic LOA No. 026-2019-00000568** dated 24 September 2019 for the period 1 January 2018 to 31 December 2018.[84]
>
> ...

The same was echoed in the JSFI[85], as follows:

> ...
>
> 4. **Respondent issued to Petitioner a Letter of Authority (LOA) under electronic LOA No. 026-2019-00000568** dated 24 September 2019 for the period 1 January 2018 to 31 December 2018.[86]
>
> ...

Sison likewise declared categorically that he received the LOA before the issuance of the NIC, PAN, FLD/FAN and WDL.[87] The transcript of stenographic notes tells:

> ...
>
> 8. Q: Do you know the [r]espondent in this case?
> A: Yes, ma'am.
>
> 9. Q: Why do you know the [r]espondent?
> A: **Respondent, through Bureau of Internal Revenue (BIR) Revenue District No. 046-Cainta-Taytay, issued to Petitioner a Letter of Authority (LOA) under electronic LOA No. 026-2019-00000568 dated 24 September 2019 for the period 1 January 2018 to 31 December 2018.**
>
> 10. Q: **What happened next**, if any?
> A: The BIR, through Revenue District Officer (RDO) Aldo B. Esmeña issued to Petitioner an undated **Notice of Informal Conference** (**NIC**) with an attached Computation of Deficiency Taxes.
>
> 11. Q: What happened next, if any?
> A: The BIR, on 15 October 2020, issued an even-dated **Preliminary Assessment Notice (PAN) with Details of Discrepancy (DOD)**, finding Petitioner liable for Income Tax, Value Added Tax, Expanded Withholding Tax,

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84 Emphasis supplied.
85 Division Docket, p. 159; Emphasis supplied.
86 Emphasis supplied.
87 See Judicial Affidavit, Exhibit "P-6", Division Docket, pp. 33-34.

> Improperly Accumulated Earnings Tax and Miscellaneous Tax including interests and compromise penalty in the aggregate amount of Five Million Four Hundred Sixty[-] Eight Thousand Five Hundred One & 22/100 Pesos (₱5,468,501.22).[88]
>
> ...

Likewise, Sison admitted that De Vergara (who received the LOA) was his employee as shown during the cross-examination[89]:

> ...
>
> ATTY. GONZALES:
> Could you tell this Court who received this Warrant of Distraint and/or Levy?
>
> WITNESS:
> **My employee.**
>
> ATTY. GONZALES:
> And his name is?
>
> WITNESS:
> Rudy D. Vergara.
>
> ATTY. GONZALES:
> For this court to know, Mr. Witness, who is Mr. Rudy De Vergara?
>
> WITNESS:
> My boy.
>
> ATTY. GONZALES:
> All right. I'm showing to you, Mr. Witness, **the letter of authority that you received marked as R-1, would you tell this Court if this is the same letter for the authority that you received from the BIR?**
>
> WITNESS:
> **It's not my name, it's my employee's name.**
>
> ATTY. GONZALES:
> And whose name is that?

---

88 Emphasis supplied.

89 TSN dated 26 October 2022, p. 19; Emphasis supplied.

WITNESS:
Rudy De Vergara.[90]

...

In addition, before the conduct of examination, it was also De Vergara that received the "First Request"[91] that was sent to petitioner *via* registered mail as shown in the Registry Return Receipt (**RRR**).[92] In fact, the same RRR indicates that "[a] registered article must be delivered under receipt to (under signature by) the addressee or to his/her authorized representative[.]" Similarly, De Vergara personally received the "Second Request"[93] that was issued subsequently.

From the foregoing, it is convincingly clear that De Vergara customarily receives correspondence for petitioner. This is even evident in his receipt of both the registered mail from respondent and, crucially, the very Notice of WDL being assailed by petitioner before this Court.

An LOA, as an aspect of administrative due process, is intended to apprise taxpayers of the revenue officers who are duly authorized to conduct the examination and assessment.[94] The same had been sufficiently satisfied in this instance, thus cannot be used as a ground to nullify a final and executory assessment.

On a related note, while the LOA bears paramount importance to the validity of the assessment, such does not precisely extend to the "First Request"[95] and "Second Request"[96] issued incidental to the BIR's examination.

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90 Emphasis supplied.
91 Exhibit "R-3", supra at note 52.
92 Exhibit "R-3-A", BIR Records, p. 22.
93 Exhibit "R-4", supra at note 53.
94 See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021.
95 Supra at note 52.
96 Supra at note 53.

RR No. 12-99[97], as amended by RR No. 18-2013[98] and RR No. 7-2018[99], outlines the due process requirements in the issuance of a deficiency tax assessment:

> ...
> 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:
>
> 3.1.1 Notice for Informal Conference. — ...
>
> 3.1.2 Preliminary Assessment Notice (PAN). — ...
> ...
>
> 3.1.4 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — ...
> ...
>
> 3.1.6 Final Decision on a Disputed Assessment (FDDA). — ...
>
> 3.1.7 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes: ...[100]
> ...

As can be observed from the aforecited issuances, the requests for presentation of records are not among the procedures that were prescribed particular due process requirements in the abovementioned RR. Neither does it specifically address the requests in the pertinent provision for modes of service. In any case, the purpose of each procedure was already achieved with petitioner's receipt of both the "First and Second Requests" duly established from the records of this case. Notwithstanding that their mode of service are not similarly consequential as those of the LOA, NIC, PAN, FLD/FAN, and FDDA, petitioner has been sufficiently notified and alerted of the BIR's request for records. Taken collectively, we thus cannot appreciate the perceived lapses in the service of the requests for presentation of records to match

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97 Supra at note 74.

98 Supra at note 75.

99 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. Issued on 22 January 2018.

100 Emphasis and italics omitted.

the gravity of due process violations in the context of RR No. 12-99, as amended.

Similarly, petitioner has clung erroneously to this Court's prior disquisitions in *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[101] (**Mannasoft**), where it was held thusly:

> ...
>
> While the Court is aware about the dangers of entertaining petitioner's blanket denial of receipt of the notices served upon it by personal service, it is also incumbent upon respondent to prove that such personal service was done properly and that the notices were received by the taxpayer or the taxpayer's authorized representative. This, respondent failed to do. ...
>
> ...
>
> The CTA *En Banc* also affirmed the cancellation of an assessment after finding that the requirements under *Section 228 of the 1997 NIRC and RR No. 12-99* were not strictly complied with. A portion of the CTA *En Banc's* discussion dealt with the authority of the person who received the FAN, as follows:
>
> > **While the foregoing Certifications may have proven the fact of mailing via registered mail of the subject FAN/FLD, no evidence was, however, submitted by the CIR proving that the same had been actually served and received by petitioner or its duly authorized agent.**
>
> ...
>
> **In the instant case, petitioner denied receipt of the NIC, the PAN, and the FAN. These BIR notices were received by an individual other than its authorized representative, and the FAN was in fact received by a security guard who is not even an employee of petitioner. Respondent also failed to present any evidence to show that they served said notices to petitioner's authorized representative. Thus, the Court finds that the NIC, the PAN, and the FAN were received by persons who are unauthorized to do so, thus, their receipt of these notices cannot be deemed as receipt by petitioner.**
>
> Non-receipt of the NIC and the PAN results to the invalidity of the FAN issued thereafter, for being violative of petitioner's right to due process. Further, since the FAN itself was also not actually received by petitioner or its authorized representative, the same

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101 CTA Case No. 8745, 13 January 2017; Citations omitted, emphasis supplied and italics in the original text.

> cannot be considered as having been validly issued and therefore, is considered void and cannot become final, executory and demandable.
>
> The fact that petitioner was able to protest the FAN, albeit belatedly, does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."
>
> The conclusion can be made that no valid assessment was issued by respondent as petitioner did not receive the same. Thus, the assessments against petitioner for CY 2008 are clearly void for being violative of petitioner's right to due process. Since the assessment against petitioner is void, the WDL subsequently issued by respondent to enforce collection of the said assessment, is likewise void. "An invalid assessment bears no valid fruit."
>
> ...

Contrary to the pronouncements in *Mannasoft*, the evidence here established indubitably that the issuances in question were, in fact, served upon and was actually received by petitioner. Petitioner's witness (Sison) also did not deny receipt thereof.

THE FORMAL LETTER OF DEMAND WITH ASSESSMENT NOTICES (FLD/FAN) ISSUED TO PETITIONER WAS VALID.

Petitioner, citing *Commissioner of Internal Revenue v. Fitness By Design, Inc.* (**Fitness By Design**)[102], contends that the FLD/FAN is void for failing to (**a**) demand the payment of tax liabilities; (**b**) indicate the due date for payment; and, (**c**) fix the amount of interest due.

We disagree.

In *Fitness By Design*, the Supreme Court noted that the amount in the Final Assessment Notice (**FAN**) remained indefinite as the same was subject to modification, depending on the date of the taxpayer's payment. The wordings in the FAN there is quoted, as follows:

---

102 G.R. No. 215957, 09 November 2016.

> ...
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249(B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted <u>if paid prior or beyond April 15, 2004</u>.**[103]
> ...

The Supreme Court also emphasized in *Fitness By Design* that the FAN there **did not contain due dates**, thus, it held:

> ...
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, **<u>the enclosed assessment pertained to remain unaccomplished</u>**.[104]
> ...

Following the principles laid down by the Supreme Court, the vital element determining the validity of the assessment is the **definiteness of the amount indicated in the FLD and the deadline for payment (shown in the assessment notices attached to the FLD)**. If the FLD substantially satisfies both requirements, then the FLD could not be said to be wanting of material details nor should the assessment be voided based on such premise.

---

103 Supra; Emphasis and underscoring in the original text.
104 Id.; Citations omitted, italics in the original text, emphasis and underscoring supplied.

Here, the mere use of the phrase "you are **requested** to pay your aforesaid deficiency..." cannot invalidate the said FLD/FAN. In fact, the same phraseology is used in the *pro-forma* Formal Letter of Demand in Annex B of RR No. 12-99, as amended by RR No. 18-2013. As to the due date, the FLD[105] clearly identifies the due date of the assessment, *i.e.,* **15 February 2021**.

Moreover, the Assessment Notices[106] indicate the due date of 15 February 2021 on the face of each page.

Lastly, as to petitioner's argument that the gap period of two (2) months between the due date of the FLD/FAN and the computation of the interest renders the amount indefinite, the same has no leg to stand on. What is proscribed is an indefinite amount of total tax due or liability, not the amount of interest.

Assuming *arguendo* that the amount of interest should also be definite and computed as of the due date, the same is still **determinable**. The FLD/FAN in the instant case clearly indicates the dates when the interest commences to run and end, *i.e.,* deficiency Income Tax (16 April 2019 to 15 November 2020), deficiency VAT (26 January 2019 to 15 November 2020), deficiency EWT (16 January 2019 to 15 November 2020), and deficiency IAET (16 April 16, 2019 to 15 November 2020), with a notation that the interest is subject to adjustment when the deficiency taxes are paid beyond the dates indicated. *Au contraire,* in *Fitness By Design*, none is provided, leaving the total tax due **undeterminable**.

In addition, the indefiniteness of the amount of interest is but only logical given the wording of Section 249 of the NIRC of 1997, as amended, *i.e.,* "interest shall be assessed and collected from the date prescribed for its payment **until the full payment thereof**" and "interest at the rate prescribed in Subsection (A) hereof until **the amount is fully paid**". The BIR could not reasonably be expected to know when the taxpayer would actually settle the assessment at the time it sends the FLD/FAN.

105 Exhibit "P-4", Division Docket, pp. 26-27; BIR Records, p. 164.
106 BIR Records, pp. 170-173.

In close, We find that the deficiency assessment herein attained finality without violating petitioner's due process rights. Consequently, this Court is not empowered to review the merits for and against the subject assessment of this present petition.

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.[107] 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*[108], 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, the foregoing premises considered, the present Petition for Review filed by petitioner Li-son Transport Service Inc. on 26 October 2021 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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107 *Editha Padlan v. Elenita Dinglasan, et al.*, G.R. No. 180321, 20 March 2013.
108 G.R. No. 221815, 29 November 2017.

(On Leave)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice