REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BANPAK INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11284

Members:

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

Promulgated:
MAY 08 2026

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DECISION

RINGPIS-LIBAN, *P.J.*:

THE CASE

The *Petition for Review* filed on October 17, 2023, prays for cancellation and withdrawal of the assessments issued by respondent against petitioner on its alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), in the aggregate amount of ₱85,215,805.77, inclusive of surcharges, interest and penalties, for calendar year 2012.[1]

THE PARTIES

Petitioner Banpak Incorporated is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at 538 Boni Serrano Avenue, Brgy. Bayanihan, Cubao, Quezon City.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to

[1] Summary of the Case, Pre-Trial Order dated August 8, 2024, Docket, p. 190.
[2] Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 178.

carry out the functions, duties and responsibilities of said office, including, *inter alia,* the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules and regulations.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

The *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* dated November 27, 2015, representing alleged income tax, VAT and EWT deficiencies, for taxable year 2012 was issued and served.[4]

Respondent then issued and served the *Formal Letter of Demand* (FLD) dated December 16, 2015, together with *Assessment Notices*, representing alleged deficiency income tax, amounting to ₱36,564,465.20, VAT amounting to ₱14,732,252.47, and EWT amounting to ₱53,295.72, inclusive of interests, for taxable year 2012.[5]

On January 7, 2016, petitioner filed the letter dated January 6, 2016,[6] disagreeing with respondent's assessment.

Thereafter, respondent issued the *Final Decision on Disputed Assessment* (FDDA) dated March 31, 2023, signed by Mahinardo G. Mailig, Regional Director of Revenue Region 7A – Quezon City. The FDDA sustained the alleged deficiency assessment pertaining to income tax amounting to ₱60,651,241.63, VAT amounting to ₱24,476,323.18, and EWT amounting to ₱88,240.96.[7]

Petitioner then filed with respondent's office an *Appeal from the Final Decision on Disputed Assessment for Taxable Year 2012* on May 18, 2023.[8]

The *Warrant of Distraint and/or Levy* (WDL) dated September 15, 2023 was then issued,[9] and served to petitioner on September 19, 2023.[10]

[3] Par. 2, Facts Admitted, JSFI, Docket, pp. 178 to 179.
[4] Par. 3, Facts Admitted, JSFI, Docket, p. 179; Exhibits "P-3" and "R-4", Docket, pp. 244 to 248, and 323 to 326, respectively.
[5] Par. 4, Facts Admitted, JSFI, Docket, p. 179; Exhibits "P-4", "P-5", "P-5-1", and "P-5-2", and "R-6", "R-6-1", "R-6-2", and "R-6-3", Docket, pp. 249 to 254, and 329 to 334, respectively.
[6] Exhibits "P-8" and "R-7", Docket, pp. 263 and 336, respectively.
[7] Par. 5, Facts Admitted, JSFI, Docket, p. 179; Exhibits "P-10" and "R-12", Docket, pp. 265 to 268 and 338 to 341, respectively.
[8] Exhibit "P-11", Docket, pp. 269 to 282.
[9] Par. 6, Facts Admitted, JSFI, Docket, p. 179.
[10] Exhibits "P-12" and "R-14", Docket, pp. 283 and 344, respectively.

PROCEEDINGS BEFORE THIS COURT

As earlier stated, on October 17, 2023, petitioner filed the present *Petition for Review*.[11]

On February 16, 2024, respondent filed his *Answer (Re: Petition for Review dated 10 October 2023)*,[12] interposing the following special and affirmative defenses: (1) the deficiency tax assessments have long become final, executory and demandable; (2) based on Section 228 of the NIRC of 1997, as amended, and Subsection 3.1.5 of Section 3 of the Revenue Regulations (RR) No. 12-99, petitioner must elevate its protest to the respondent within thirty (30) days from date of receipt of the final decision of the respondent's duly authorized representative; otherwise, the assessment shall become final, executory and demandable; (3) assessments are *prima facie* presumed correct and made in good faith; (4) petitioner was accorded due process in the issuance of deficiency tax assessments by respondent; and (5) the WDL was validly issued and served upon petitioner, and Revenue Memorandum Order No. 39-2007 provides that upon issuance by respondent or Regional Director of the FDDA against taxpayer, WDL shall forthwith be immediately issued and served.

In the Minute Resolution dated February 21, 2024,[13] the parties were ordered to immediately proceed and to personally, or through their authorized representatives, appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on April 3, 2024. However, the PMC-CTA issued the *No Agreement To Mediate* dated April 22, 2024,[14] stating that the parties decided not to have their case mediated.

On February 23, 2024, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder with 710 pages.[15]

The Pre-Trial Conference was set and held on July 4, 2024.[16] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on May 16, 2024,[17] while the *Respondent's Pre-Trial Brief* was submitted on June 27, 2024.[18]

On July 16, 2024, the parties filed their *Joint Stipulation of Facts and Issues*,[19] which was admitted and approved by the Court in its Resolution dated July 31,

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[11] Docket, pp. 6 to 20.
[12] Docket, pp. 79 to 85.
[13] Docket, pp. 86 to 87.
[14] Docket, p. 93.
[15] *Compliance* dated February 23, 2024, Docket, pp. 90 to 91.
[16] Notice of Pre-Trial Conference dated February 22, 2024, Docket, pp. 88 to 89; Minutes of the hearing held on, and Order dated, July 4, 2024, Docket, pp. 132 to 133.
[17] Docket, pp. 95 to 99.
[18] Docket, pp. 124 to 131.
[19] Docket, pp. 178 to 184.

2024,[20] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated August 8, 2024 was then issued.[21]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimony of Ms. Annielyn N. Natuel,[22] its Accounting Officer.

On October 28, 2024, petitioner filed its *Formal Offer of Evidence*,[23] to which respondent filed his *Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated October 28, 2024)* on October 29, 2024.[24] In the Resolution dated November 29, 2024,[25] the Court admitted all of petitioner's offered exhibits.

For his part, respondent offered the testimonies of the following Revenue Officers, namely: (1) Karla M. Velas,[26] (2) Jezzebelle S. Bercasio,[27] and (3) Jeremy B. Estioko.[28]

On February 6, 2025, respondent filed his *Formal Offer of Evidence*,[29] to which petitioner filed its *Comments to Respondent's Formal Offer of Evidence* on February 10, 2025.[30] In the Resolution dated March 26, 2025,[31] the Court admitted all of respondent's offered exhibits.

The *Memorandum (for the Petitioner)* was filed on May 6, 2025,[32] while respondent's *Memorandum* was submitted on May 7, 2025.[33]

The case was considered submitted for decision on May 15, 2025.[34]

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[20] Docket, p. 187.
[21] Docket, pp. 190 to 196.
[22] Docket, pp. 57 to 65; Minutes of the hearing held on, and Order dated, August 13, 2024, Docket, pp. 199 to 201.
[23] Docket, pp. 224 to 228.
[24] Docket, pp. 296 to 298.
[25] Docket, pp. 302 to 303.
[26] Exhibit "R-17", Docket, pp. 137 to 146; Minutes of the hearing held on, and Order dated, January 23, 2025, Docket, pp. 304 to 305.
[27] Exhibit "R-18", Docket, pp. 169 to 172; Minutes of the hearing held on, and Order dated, January 23, 2025, Docket, pp. 304 to 305.
[28] Exhibit "R-19", Docket, pp. 103 to 108; Minutes of the hearing held on, and Order dated, January 23, 2025, Docket, pp. 304 to 305.
[29] Docket, pp. 307 to 316.
[30] Docket, pp. 358 to 362.
[31] Docket, pp. 365 to 366.
[32] Docket, pp. 368 to 384.
[33] Docket, pp. 386 to 395.
[34] Minute Resolution dated May 15, 2025, Docket, p. 396.

THE STIPULATED ISSUE

As stipulated by the parties, the issue for this Court's resolution is as follows:

> "Whether petitioner is liable to pay the alleged deficiency Income Tax, Value Added Tax, Expanded Withholding Tax in the aggregate amount of PHP85,215,805.77, for taxable year 2012."[35]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the present case; that respondent's period to collect has already lapsed; that the FLD is void for disregarding the arguments raised by petitioner in its protest to PAN; that the alleged undeclared income based on unverified third-party information (TPI) is legally untenable; and that the alleged VAT deficiency assessment based on the same TPI is likewise legally untenable.

Respondent's counter-arguments:

Respondent contends that the assessments for deficiency income tax, VAT and EWT have long been become final, executory and demandable for petitioner's failure to file a timely and valid protest, and thus, the assessments are beyond judicial review; that petitioner is liable to pay the alleged deficiency income tax, VAT, EWT in the aggregate amount of ₱85,215,805.77, for taxable year 2012; and that respondent's issuance of the WDL was validly issued and served upon petitioner.

THE COURT'S RULING

After careful consideration, the Court rules in favor of respondent.

The Court has jurisdiction over the present case

Respondent argues that the Court has no jurisdiction to entertain the appeal and determine the validity and correctness of the assessments as the same have already attained finality. He claims that petitioner's administrative protest was denied by the FDDA dated March 31, 2023 issued by respondent and which petitioner received on April 14, 2023. He continues that under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, petitioner

[35] Issues, JSFI, Docket, p. 179.

had thirty (30) days to appeal respondent's denial of its protest to this Court, or elevate the protest, through request for reconsideration, to his office. He points out that since petitioner received the denial of its administrative protest on April 14, 2023, it had until May 15, 2023 to file a petition for review before this Court or a request for reconsideration before his office. He asserts that petitioner, however, filed its request for reconsideration before respondent only on May 18, 2023, hence, the *Petition* was filed out of time. Consequently, the deficiency tax assessments have become final, executory and demandable.

On the other hand, petitioner submits that this Court has jurisdiction over the present case as it is assailing the validity of the issuance of the WDL to enforce collection of alleged tax deficiencies. Relative thereto, it invokes the authority of this Court to decide on "other matters" related to the tax assessment. It avers that the present *Petition* was filed on October 17, 2023, which is within thirty (30) days from September 19, 2023, the date petitioner received a copy of the WDL. Hence, according to petitioner, the present *Petition* was timely filed, and most importantly, this Court has jurisdiction over the present case.

The Court agrees with petitioner.

Jurisdiction over the subject matter is required for a court to act on any controversy. It is conferred by law and not by the consent or waiver upon a court. As such, if a court lacks jurisdiction over an action, it cannot decide the case on the merits and must dismiss it.[36] To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[37]

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[38] as amended by RA No. 9282,[39] state as follows:

> "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

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

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

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

[39] 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.

thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**

xxx xxx xxx

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

The Supreme Court, in *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[40] interpreted the above-quoted provisions in this wise, to wit:

"Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. vs. Court of Appeals*, the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide 'other matters' related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over 'other matters,' it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term 'other matters' referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

xxx xxx xxx

Plainly, the assailed CTA *En Banc* Decision, was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.

[40] G.R No. 169225, November 17, 2010.

Thus, **on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is <u>not limited</u> to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**

xxx xxx xxx

Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as <u>separate and independent of each other</u>.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an 'other matter' must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. **The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.**" *(Emphases and underscoring added)*

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[41] the Supreme Court held, as follows:

"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis added)*

[41] G.R. 162852, December 16, 2004.

Based on the said provisions and jurisprudential pronouncements, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR.[42] In addition, any party adversely affected by the said decisions or ruling, may file an appeal to this Court within thirty (30) days from receipt thereof, under the above quoted Section 11 of RA No. 1125, as amended.

Thus, petitioner had thirty (30) days from receipt of the WDL on September 19, 2023,[43] or until October 19, 2023, within which to file its appeal before this Court. Accordingly, the filing of the present *Petition for Review* on October 17, 2023,[44] was timely made, and correspondingly vests jurisdiction to this Court to take cognizance of the same.

However, the subject tax assessments have already attained finality

Respondent posits that petitioner received the FDDA on April 14, 2023, thus, it had only until May 15, 2023 to file a petition for review before this Court or a request for reconsideration before his office. However, petitioner filed its request for reconsideration only on May 18, 2023. Respondent contends that petitioner's failure to file an administrative appeal in due time made the assessments in question final, executory, and demandable. Thus, petitioner is now barred from disputing the correctness of the assessments or from invoking any defense that would reopen the question of its tax liabilities on the merits.

On the other hand, petitioner claims that it received the FDDA only on April 21, 2023, and that on May 18, 2023, it filed an *Appeal* of the same date before the office of respondent.

The Court rules in favor of respondent.

Petitioner's witness Ms. Annielyn D. Natuel states that she personally received the FDDA only on April 21, 2023, thus:[45]

> "ATTY. CLARO:
> Q. Ms. Witness, in your answer to Question No. 30 in your Judicial Affidavit, you mentioned that you received a copy of the Final Decision on Disputed Assessment (FDDA) on April 21, 2023. Is that correct?

[42] Refer to *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010.
[43] Exhibits "P-12" and "R-14", Docket, pp. 283 and 344, respectively.
[44] Docket, pp. 6 to 20.
[45] Transcript of Stenographic Notes during the hearing held on August 13, 2024, pp. 8 to 10.

MS. NATUEL:
A. Sir... *(interrupted)*

ATTY. CLARO:
Q. Just answer yes or no.

MS. NATUEL:
A. Yes.

ATTY. CLARO:
Q. Ms. Witness, upon examination of Exhibit P-10 or Annex E of the petitioner's Petition for Review, there appears to be a handwritten stating that the same was received on April 21, 2023, with a signature but without a name thereon. Is that your signature?

JUSTICE RINGPIS-LIBAN:
Who received the FDDA as appearing in the exhibits? *Sino ang nag-*receive *ng* FDDA?

MS. NATUEL:
A. I received it. I am. I am, Your Honor.

JUSTICE RINGPIS-LIBAN:
You received the same.

MS. NATUEL:
A. Yes, Your Honor.

JUSTICE RINGPIS-LIBAN:
Okay.

ATTY. CLARO:
Q. However, Ms. Witness, I'm showing you a receiving copy of the FDDA pre-marked as R-12. Can you read to this Honorable Court...

JUSTICE RINGPIS-LIBAN:
What exhibit is that?

ATTY. CLARO:
R-12, Your Honor.

JUSTICE RINGPIS-LIBAN:
R-12. That's your document.

ATTY. CLARO:
Can you read to this Honorable Court...

JUSTICE RINGPIS-LIBAN:
Wait a minute. That's your document. So, you'd better ask a preliminary question.

ATTY. CLARO:
Q. Yes. Do you recollect having received a file copy or the BIR copy of the FDDA?

MS. NATUEL:

A. As far as I remember, I received it on April 21. I recall receiving such documents from your office.

JUSTICE RINGPIS-LIBAN:
It's your document, so you present that during the time that you will present your witness, okay? And then the court will evaluate who is telling the truth. Is this the only FDDA that you signed?

MS. NATUEL:
A. **If it's based on the record, <u>it's April 14</u>...**

JUSTICE RINGPIS-LIBAN:
That's your copy.

MS. NATUEL:
A. That's their copy.

JUSTICE RINGPIS-LIBAN:
No, your copy. The one that you marked as P-10 is your copy? Is your office copy?

MS. NATUEL:
A. Actually, Your Honor...

JUSTICE RINGPIS-LIBAN:
Sige, tagalugin mo na lang.

MS. NATUEL:
A. Actually, Your Honor, I'm not used to receiving these kinds of notices. And upon recalling my memory, *sa pag*-verify *ko po* April 21, *hindi po ako* used *na mag*-receive *ng mga ganitong* notices.

JUSTICE RINGPIS-LIBAN:
So, *yung kopya na yan, yang kopya ng* FDDA *na iyan, yung nilagay mo na* exhibit, *sa* records *niyo iyon? Nakuha mo iyan sa* records *ng* office?

MS. NATUEL:
A. ***Hindi ko kasi* Your Honor *naisulat agad.* So, *vinerify ko po doon sa* logbook, *yun po ang nakalagay na* April 21.**

JUSTICE RINGPIS-LIBAN:
Hindi ko tinatanong yung report *nila.* So, *ano yung* logbook *na sinasabi mo?*

MS. NATUEL:
A. ***Sulat po yun ng* guard *sa* office *kung kailan pumunta or nag*-visit *yung* BIR.**" *(Emphases added)*

Based on the foregoing testimony, Ms. Annielyn D. Natuel did not immediately indicate the date of receipt of the FDDA. Rather, she relied on the guard's logbook to verify the date of service by the BIR, which was allegedly on April 21, 2023.

The foregoing averments of petitioner were not substantiated. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[46] Thus, such averments can not to be given any weight.

On the other hand, respondent presented as evidence the FDDA and the *Details of Discrepancies* dated March 31, 2023,[47] and the *Affidavit of Service of Final Decision on Disputed Assessment* dated April 19, 2023,[48] to prove that the FDDA was received by *"Annielyn D. Natuel"* on *"April 14, 2023"*. Notably, each page of the said FDDA and the *Details of Discrepancies* bears the name, signature and designation of Ms. Annielyn D. Natuel, and the date of receipt, *i.e.*, *"04/14/23"*. More importantly, Ms. Annielyn D. Natuel never claimed that the date of receipt and signature appearing on respondent's copy of the FDDA and the *Details of Discrepancies* were not affixed by her.

As a rule, documentary evidence takes precedence over testimonial evidence as the latter can easily be fabricated. It also cannot be denied that the human memory on dates is frail and thus, there is no reasonable assurance of its correctness unless the date is an extraordinary or unusual one for the witness.[49]

Hence, between the date of receipt, *i.e.*, "04/21/23", written on petitioner's copy of the FDDA,[50] which was admitted belatedly written and allegedly based on the logbook of petitioner's guard, and respondent's positive evidence as regards the actual date of receipt of the FDDA, *i.e.*, "04/14/23", the latter is more credible and thus, deserves more weight.

In view of the foregoing, the Court finds that **petitioner's date of receipt of the FDDA is April 14, 2023**.

Notably, Section 228 of the NIRC of 1997 provides for the procedure and manner upon which a taxpayer may protest an assessment, including a remedy to seek redress of the inaction or adverse decision on the disputed assessment, *viz.*:

> "Section 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx

[46] *Castillo v. Republic of the Philippines, et al.*, G.R. No. 214064, February 6, 2017.
[47] Exhibit "R-12", Docket, pp. 338 to 341.
[48] Exhibit "R-12-1", Docket, p. 342.
[49] *Heirs of Eliseo Bagaycay v. Heirs of Anastacio Paciente,* G.R. No. 212126, August 4, 2021.
[50] Exhibit "P-10", Docket, pp. 265 to 268.

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment 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.

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

Implementing the above-quoted Section 228, Section 3 of RR No. 12-99,[51] as amended by RR No. 18-2013,[52] provides, in part, as follows:

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

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

xxx xxx xxx

3.1.4 *Disputed Assessment.* — xxx

xxx xxx xxx

[51] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[52] SUBJECT: 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 either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. 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." *(Emphases and underscoring added)*

Based on the foregoing provisions, if the protest is denied by the respondent's duly authorized representative, as in this case, the taxpayer may either: (i) appeal to this Court within thirty (30) days from date of receipt of the FDDA; or (ii) **elevate his protest through request for reconsideration to respondent within thirty (30) days from date of receipt of the FDDA. Otherwise, the assessment shall become final, executory and demandable.**

In this case, as earlier determined and settled, the FDDA[53] was received by petitioner on **April 14, 2023**. Hence, petitioner has thirty (30) days to appeal, either to this Court or to the office of respondent, the FDDA, or **until May 15, 2023.**[54] However, petitioner only filed its *Appeal from the Final Decision on*

[53] Exhibits "P-10" and "R-12", Docket, pp. 265 to 268 and 338 to 341, respectively.
[54] May 14, 2023 (the 30th day) fell on a Sunday.

Disputed Assessment for Taxable Year 2012, with the office of respondent, ***only* on May 18, 2023**.[55] For failure to file an administrative or judicial appeal against the FDDA within thirty (30) days from April 14, 2023, the FDDA became final, executory, and demandable.

The right of respondent to collect the alleged deficiency taxes has not yet prescribed

Finally, petitioner asserts that the FLD was issued on December 16, 2015. Counting three (3) years therefrom, respondent had until December 16, 2018 within which to collect the deficiency taxes. Considering that petitioner only received the WDL on September 19, 2023, the same had already prescribed.

Section 203 of the Tax Code provides:

> 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.

As a rule, the 3-year period to collect begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer, thus:

> In *CIR v. United Salvage and Towage (Phils.), Inc.*, the Court held that in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes, thus:
>
> > The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of *Batas Pambansa Blg.* 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue

[55] Exhibit "P-11", Docket, pp. 269 to 282

> tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run **on the date the assessment notice had been released, mailed or sent to the taxpayer.**[56] *(Citations omitted; Emphasis supplied)*

In this case, the FLD dated December 16, 2015 was received by petitioner on the same date.[57] Apparently, the three (3)-year period to collect the assessed taxes commenced on December 16, 2015 and ended on December 16, 2018, following the above-quoted ruling of the Supreme Court in *QL Development.* However, the subject WDL was only issued on September 15, 2023 and was served to petitioner on September 19, 2023.[58] Thus, it appears that the right to collect the assessed taxes by respondent or the BIR had already prescribed.

On this score, the Court emphasizes that **Section 203 of the Tax Code, in relation to the ruling of the Supreme Court in *QL Development*, must be harmonized with Sections 223 and 228 of the Tax Code.**

As discussed earlier, Section 228 of the Tax Code grants the taxpayer a period of 30 days within which to protest an assessment, either by way of a request for reconsideration or reinvestigation. In cases where a request for reconsideration is denied by the CIR's authorized representative, Revenue Regulations (RR) No. 18-2023[59] provides the following remedies: (1) appeal the denial to this Court within 30 days from its receipt; or (2) elevate the same to the CIR within the same period.

Pending appeal, the Supreme Court ruled that *an assessment cannot be considered final and executory*, as it will effectively deprive the taxpayer of the remedies available under Section 228 of the Tax Code. The case of *Light Rail Transit Authority v. Bureau of Internal Revenue* (LRTA)[60] is instructive:

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[56] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, March 29, 2022.
[57] Exhibits "P-4", "P-5", "P-5-1", and "P-5-2", and "R-6", "R-6-1", "R-6-2", and "R-6-3", Docket, pp. 249 to 254, and 329 to 334, respectively.
[58] Exhibits "P-12" and "R-14", Docket, pp. 283 and 344, respectively.
[59] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
[60] G.R. No. 231238, June 20, 2022.

> Contrary to the ruling of the Court of Tax Appeals En Banc, the Final Decision on Disputed Assessment cannot be considered as the Decision appealable to the Court of Tax Appeals xxx **This interpretation will render nugatory the remedy of appeal to the Office of the Commissioner of Internal Revenue of the denial of the protest issued by his or her duly authorized representative**, a remedy which was properly and timely availed of by petitioner.*(Emphasis supplied)*

Meanwhile, Section 223 of the Tax Code also provides:

> ***SEC. 223.*** *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; xxx

The above-quoted provision states, among others, that the running of the three (3)-year period of the CIR's right to collect shall be *suspended for the period during which the commissioner is prohibited from making the assessment or beginning distraint or levy* or a proceeding in court and for sixty (60) days thereafter, among others.

Harmonizing the above-quoted laws and jurisprudence, Section 203 of the Tax Code provides the general rule that collection proceedings must be initiated by the BIR within 3 years from receipt of the assessment notice by the taxpayer.

However, as discussed in *LRTA*, if there is an on-going administrative protest or appeal against an assessment notice, such assessment cannot be considered final and executory, as it will effectively deprive the taxpayer of the remedies under Section 228 of the Tax Code. Consequently, no collection may proceed from a non-demandable assessment that has not yet become final and executory.

Hence, during the pendency of a protest or appeal against an assessment, the CIR or the BIR is effectively prohibited from beginning distraint or levy of a non-demandable assessment. Under this scenario, Section 223 of the Tax Code provides that the 3-year prescriptive period shall be suspended for the period during which the commissioner is prohibited from beginning distraint or levy and for sixty (60) days thereafter.

Applying the foregoing discussion in this case, petitioner is correct in asserting that the BIR's right to collect commenced on December 16, 2015 when it received the FLD and assessment notice. However, based on records, petitioner filed its Formal Protest thereto on January 7, 2016.[61] Consequently, petitioner opted to await the decision of the Revenue Regional Director, which was eventually received by petitioner on April 14, 2023.

Again, petitioner's belated filing of its appeal rendered the April 14, 2023 FDDA final and executory.

Guided by the provisions of Section 223 of the Tax Code, in relation to the ruling of the Supreme Court in *LRTA*, the 3-year prescriptive period under Section 223 was <u>effectively suspended from January 7, 2016 to July 13, 2023</u>.[62]

Counting the *remainder* of the 3-year period for collection from July 13, 2023, the BIR has until June 21, 2026 *[3 years less twenty-two (22) days counted from December 16, 2015 to January 7, 2016]*, within which to proceed with the distraint or levy. Considering that the subject WDL was issued on September 19, 2023, the same was issued well within the remainder of the 3-year prescriptive period for collection.

To encapsulate, the Court may exercise its "other matters" jurisdiction over the subject WDL. However, the Court has no power to examine an assessment that has become final and executory, *i.e.*, petitioner belatedly filed its appeal on the FDDA before respondent. Finally, respondent's right to collect has not yet prescribed because the 3-year prescriptive period is deemed suspended during the administrative proceedings and 60 days thereafter under Section 223 of the Tax Code.

ACCORDINGLY, the Petition for Review is **DENIED**, for lack of merit.

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[61] See Note 6.
[62] July 13, 2023 is arrived at by adding the 30-day period for petitioner to avail the remedies under Section 228, and the 60-day period under Section 223, both of the Tax Code.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice