REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FOUR SEAS TRADING CORPORATION,
Respondent.

CTA EB No. 2507
(CTA Case No. 9915)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:

APR 05 2023 10:32a.m.

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DECISION

REYES-FAJARDO, *J.*:

Assailed in this Petition for Review filed on July 29, 2021[1] are the Decision[2] dated January 11, 2021 and Resolution[3] dated June 16, 2021 in CTA Case No. 9915, whereby the Court in Division invalidated the Commissioner of Internal Revenue's Final Notice Before Seizure (FNBS), Preliminary Assessment Notice (PAN), and Final Assessment Notices and Formal Letter of Demand (FAN/FLD) issued against Four Seas Trading Corporation for calendar year (CY) 2014.

First, the facts.

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1 *Rollo,* pp. 3-21.
2 *Id.* at pp. 28-49.
3 *Id.* at pp. 51-56.

Petitioner is the duly appointed Commissioner of the BIR, duly appointed and empowered to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities, pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act" of 1997, and as further amended by RA No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Act, with office address at the BIR National Office Building, Diliman, Quezon City.

Respondent Four Seas Trading Corporation is a corporation duly organized and existing under and by virtue of Philippine laws; and is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number (TIN) 000-765-784.

On February 3, 2016, respondent received a Letter of Authority (LOA) with Serial Number (SN) eLA201200045177/LOA-030-2016-00000018 dated January 19, 2016, issued by Ms. Araceli L. Francisco, OIC-Regional Director of Revenue Region No. 6-Manila, authorizing Revenue Officer (RO) Mubarak Hadji Omar and Group Supervisor (GS) Ma. Sherly Macaroy, to examine its books of accounts and other accounting record for all internal revenue taxes, including documentary stamp tax and other taxes (miscellaneous tax), for the periods January 1, 2014 to December 31, 2014. This was accompanied with a Checklist of Requirements and First Notice for Presentation of Records.

In response to said LOA, respondent submitted several documents to BIR-Revenue District Office (RDO) No. 30, through RO Omar.

Sometime in July 2018, respondent received the BIR's letter dated June 29, 2018, informing that it was duly selected as one of the Tax Account Management Program (TAMP) taxpayers. Said letter was sent to its Binondo address and received by a security guard on duty.

On July 31, 2018, respondent received a Final Notice Before Seizure (FNBS) of even date, stating that it had deficiency taxes for

CY 2014 in the total amount of ₱34,235,794.91, broken down as follows:

Assessment Notice No.	Kind of Tax	Basic Tax	Surcharge /Interest /Compromise	Total Amount Due
30-14-IT-17-564	Income	₱10,845,655.40	₱5,783,771.11	₱16,629,426.51
30-14-MC-17-564 (IT)	MC		50,000.00	50,000.00
30-14-VT-17-565	Value-Added Tax (VAT)	4,285,138.85	2,547,240.80	6,832,379.65
30-14-MC-17-565 (VT)	MC		40,000.00	40,000.00
30-14-WE-17-566	Expanded Withholding Tax (EWT)	17,150.00	10,290.00	27,440.00
30-14-MC-17-566 (WE)	MC		4,000.00	4,000.00
30-14-IAET-17-567	Improperly Accumulated Earnings Tax (IAET)	5,945,532.25	1,486,383.06 3,170,633.44	10,602,548.75
30-14-MC-17-567 (IAET)	MC		50,000.00	50,000.00
TOTAL		₱21,093,476.50	₱1,486,383.06 ₱11,511,935.35 ₱144,000.00	**₱34,235,794.91**

On August 1, 2018, respondent requested copies of the PAN dated December 20, 2017, FAN dated January 12, 2018, and Preliminary Collection Letter (PCL) dated July 31, 2018, with the BIR-RDO No. 30. The requested FAN was received by respondent on even date.

On August 30, 2018, respondent filed a Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction before the Court in Division.

On January 11, 2021, the Court in Division rendered the assailed Decision, disposing the case as follows:

> **WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the Final Notice Before Seizure dated July 31, 2018 is **WITHDRAWN** and **SET ASIDE**.
>
> Moreover, the PAN dated December 20, 2017, the FAN or *Assessment Notices*, and the FLD, all dated January 12, 2018, issued against [respondent], for CY 2014, are **CANCELLED** and **SET ASIDE**, for being void.
>
> **SO ORDERED.**

On January 28, 2021, petitioner filed a Motion for Reconsideration on the assailed Decision dated January 11, 2021.

Under the equally assailed Resolution dated June 16, 2021, petitioner's Motion for Reconsideration was denied in this wise:

> **WHEREFORE**, premises considered, [petitioner's] Motion for Reconsideration (Re: Decision promulgated on January 11, 2021) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Hence, the present recourse.

Petitioner maintains that under Section 228 of the National Internal Revenue Code (NIRC), as amended, as interpreted in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc. (VDJI)*,[4] a valid administrative protest to the final assessment must be filed, within thirty (30) days from receipt thereof, lest the same attain finality. Respondent requested copies of the FAN from the BIR and was received on August 1, 2018. As respondent failed to protest the FAN within said period, the assessment had become final, executory, and demandable. Being so, the Court in Division has no jurisdiction over this case.

Assuming, the Court in Division has jurisdiction over this case, petitioner claims that the PAN, and the FAN/FLD were duly mailed to respondent's address at 674 Muelle de Binondo Street, Barangay 287, Zone 27, Binondo, Manila, as evidenced by the relevant registry receipts for said documents. As such, due process on assessment under Section 228 of the NIRC, as amended, was duly complied with.

In closing, petitioner states that respondent is liable for her deficiency tax assessments for CY 2014.

By way of Comment (on Petition for Review) dated November 19, 2021,[5] respondent counters that *VDJI* does not apply because: *one*, the tenor of the FNBS in this case, and the PCL in *VDJI* are different. Said FNBS had a tenor of finality, whereas in *VDJI*, the PCL therein

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4 G.R. No. 221780, March 25, 2019.

5 *Rollo*, pp. 62-82.

had no tenor of finality; and *two,* the Supreme Court recognized an FNBS as petitioner's final act.

Granting, *VDJI* is applicable in this case, respondent ripostes that it received the BIR's FNBS on July 31, 2018. As said FNBS is a step in collecting the assessed taxes, it falls under the "other matters" arising from the NIRC, as amended, over which, the Court in Division may exercise jurisdiction.

Respondent further retorts that petitioner's witness admitted in open court that the BIR has no proof that the PAN, and FLD and FAN was received by it, or its authorized representative. Therefore, it was not able to ventilate its defenses on said notices, violative of its right to due process on assessment under Section 228 of the NIRC, as amended.

To punctuate its arguments, respondent theorizes that the Court in Division committed no reversible error in invalidating respondent's PAN, FLD and FAN, and FNBS for TY 2014.

OUR RULING

We grant the Petition.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[6] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal,** as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds

[6] An Act Creating the Court of Tax Appeals.

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> of internal revenue taxes, fees or other charges, penalties in relations thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> ...[7]

Pertinently, Section 3(a)(1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals[8] (RRCTA) provides that the Court in Division has jurisdiction over: *one*, petitioner's decision or inaction involving disputed assessments (first part); and *two*, other matters arising under the NIRC, as amended (second part), among others. [9]

In relation to the *first* part of Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, as implemented by Section 3(a)(1) and (2), Rule 4 of the RRCTA, for the decision or inaction of respondent or her duly authorized representatives to be raised on appeal before the Court in Division, there must first be a disputed assessment.[10] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC,[11] as amended which states:

> Section 228. *Protesting of Assessment.* — ...
>
> ...
>
> 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**

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7 Boldfacing supplied.

8 A.M. No. 05-11-07-CTA.

9 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive 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;
(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws, administered by the Bureau of Internal Revenue ... (Boldfacing supplied)

10 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

11 Tax Reform Act of 1997.

> **request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> Within sixty (60) days from filing of the protest, all relevant, supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[12]

Here, respondent primarily challenged the FAN it requested and received from the BIR, covering CY 2014. This observation is supported by the following circumstances: *one,* its aim in filing the petition for review with the Court in Division was to prevent the FAN from attaining finality;[13] *two,* the period to appeal with the Court in Division was reckoned from receipt of said FAN on August 1, 2018;[14] *three,* the nature of the case in the assailed Decision, "... prays for the cancellation and withdrawal of the *Formal Assessment Notice* (FAN) issued by [petitioner] against [respondent] for its alleged deficiency taxes for calendar year (CY) 2014 in the aggregate amount of ₱34,235,794.91, inclusive of interests, etc.";[15] *four,* the issues jointly raised by petitioner and respondent for resolution of the Court in Division all pertain to the validity of the FAN;[16] and *five,* the specific prayer in respondent's Petition for Review seeks to invalidate the FAN.[17] Undeniably, this case falls under the *first* part of Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282. As such, respondent's failure to file an administrative protest thereto is fatal to its cause.

We expound.

In *VDJI,*[18] V.Y. Domingo Jewellers, Inc. (Domingo) received a PCL from the BIR on August 11, 2011. Said PCL informed VDJI of the

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[12] Boldfacing supplied.
[13] Par. 17, Petition for Review in CTA Case No. 9915. Docket (CTA Case No. 9915), p. 16.
[14] *Ibid.*
[15] Statement of the Case, assailed Decision dated January 11, 2021, p. 1. *Rollo,* p. 28.
[16] Assailed Decision dated January 11, 2021, p. 9. *Id.* at p. 36.
[17] Prayer, petitioner (now respondent)'s Petition for Review before the Court in Division. Docket (CTA Case No. 9915), p. 40.
[18] *Supra* note 4.

existence of the assessment (FAN) from which said PCL was based. Domingo requested from the BIR, certified copies of such FAN. On September 15, 2011, Domingo received copies of said FAN. On September 16, 2011, Domingo appealed to the Court of Tax Appeals (CTA) in Division, assailing the validity of the *FAN and PCL*. The Commissioner of Internal Revenue (CIR) moved for the dismissal of said case, claiming that Domingo failed to file a valid administrative protest to the FAN. The CTA in Division dismissed the case for lack of jurisdiction but was overturned by the CTA *En Banc*. In upholding the dismissal made by the CTA in Division, the Supreme Court decreed:

> What is evident in the instant case is that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 have not been disputed by V.Y. Domingo at the administrative level without any valid basis therefor, in violation of the doctrine of exhaustion of administrative remedies. To reiterate, what is appealable to the CTA are decisions of the CIR on the protest of the taxpayer against the assessments. There being no protest ruling by the CIR when V.Y. Domingo's petition for review was filed, the dismissal of the same by the CTA First Division was proper. As correctly put by [Presiding] Justice Roman G. Del Rosario in his Dissenting Opinion, "(C)learly, petitioner did not exhaust the administrative remedy provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 which is fatal to its cause. Consequently, the non-filing of the protest against the FLD led to the finality of the assessment."

VDJI ordains that a taxpayer, who, after receiving the BIR's collection letter referring to a final assessment, subsequently receives such assessment, must file an administrative protest on said final assessment before the BIR, lest appeal to the Court in Division be considered premature.

VDJI also made it clear that said administrative protest to the final assessment must be filed with the BIR, irrespective of whether the receipt thereof by the taxpayer from the BIR was through valid service, *or* the taxpayer's own request or volition. The reason is evident—Section 228 of the NIRC, as amended[19] does not distinguish

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[19] Section 228. *Protesting of Assessment.* — ...

...

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. (Boldfacing supplied) as to how the final assessment was received by the taxpayer for the requirement of prior administrative protest with the BIR to apply; neither should we.[20]

This case closely resembles *VDJI*. Specifically, as gathered from the allegations in respondent's petition for review with the Court in Division:[21]

> On July 31, 2018, respondent received the BIR's FNBS. Said FNBS referred to the assessment notices (FAN) for Income Tax, Value-Added Tax, Expanded Withholding Tax, Improperly Accumulated Earnings Tax, and their corresponding miscellaneous charges.[22]
>
> On August 1, 2018, respondent **requested** from BIR Revenue District Office (RDO) 30, copies of the PAN, **FAN**, and PCL.[23] On the same day, the BIR **provided respondent with copies** of the PAN, *sans* the second and last page thereof, and **FAN**.[24]
>
> On August 2, 2018, upon its request, the BIR provided respondent a copy of the PAN with Details of Discrepancy, along with the Formal Letter of Demand (FLD) and FAN.[25]
>
> On August 30, 2018, respondent filed a petition for review before the Court in Division, challenging the FAN.

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20 In *Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018, the Supreme Court declared that: "It is an elementary rule in statutory construction that: where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit, nec nos distinguere debemus.*"

21 In *Montero v. Montero*, G.R. No. 217755, September 18, 2019, it was ruled that "a court's jurisdiction over the subject matter of a particular action is determined by the plaintiff's allegations in the complaint and the principal relief he seeks in the light of the law that apportions the jurisdiction of courts." The petition for review, filed before the Court in Division is the equivalent of said complaint.

22 Par. 10, respondent's Petition for Review (with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Court in Division. Docket (CTA Case No. 9915), p. 13.

23 Par. 11 respondent's Petition for Review (with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Court in Division. *Id.* at p. 13.

24 Par. 17, respondent's Petition for Review (with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Court in Division. *Id.* at p. 16.

25 Par. 13, respondent's Petition for Review (with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Court in Division. *Id.* at p. 14.

Consistent with Section 228 of the NIRC, as amended, in relation to the *first* part of Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, and *VDJI*, respondent had thirty (30) days from its date of receipt of the *FAN* on August 1, 2018,[26] or until August 31, 2018, to file a valid administrative protest thereto. Instead of lodging an administrative protest with the BIR, respondent challenged the FAN, via a petition for review before the Court in Division, filed on August 30, 2018. Without a valid administrative protest, the final assessment did not become a disputed assessment. Therefore, review thereof by the Court in Division is not possible. To stress, it is petitioner's decision or inaction over the taxpayer's protest on the assessment, and not the assessment itself, [27] which is appealable to the Court in Division.

Respondent, too, violated the doctrine of exhaustion of administrative remedies. Its direct resort to the Court in Division, *sans* a valid administrative protest to the FAN, failed to accord petitioner the opportunity to "re-examine its findings and conclusions" and to decide the issues raised within her competence.[28]

Respondent contends that *VDJI* does not apply because: *one,* the tenor of the FNBS in this case, and the PCL in *VDJI* are different. Said FNBS had a tenor of finality, whereas in *VDJI,* the PCL therein had no tenor of finality; and *two, Commissioner of Internal Revenue v. Isabela Cultural Corporation (ICC)*[29] recognized an FNBS as petitioner's final act. For these reasons, such FNBS is appealable to the Court in Division.

We are not swayed.

One, on the assumption that the FNBS had a tenor of finality, respondent is not excused from the filing of an administrative protest to the FAN it requested, and received from the BIR, as commanded by Section 228 of the NIRC, as amended. *VDJI* settled the matter in this wise:

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26 *Supra* note 24.

27 *Light Rail Transit Authority v. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue,* G.R. No. 231238, June 20, 2022, citing *Commissioner of Internal Revenue v. Villa,* G.R. No. L-23988, January 2, 1968.

28 See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99, October 3, 2018.

29 G.R. No. 135210, July 11, 2001.

> **That V.Y. Domingo believed that the PCL "undeniably shows" the intention of the CIR to make it as its final "decision" did not give it cause of action to disregard the procedure set forth by the law in protesting tax assessments and act prematurely by filing a petition for review before the courts.** The word "decisions" in the aforementioned provision of R.A. No. 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the CTA only upon receipt of the decision of the Collector on the disputed assessment.[30]

Two, ICC finds no application in this case. There, Isabela Cultural Corporation (Isabela) received the BIR's deficiency tax assessment covering TY 1986. Isabela *protested* said assessment by way of a request for reconsideration. After said protest, the only communication received by Isabela was the FNBS, which the latter impugned before the CTA. *ICC* held:

> A final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals (CTA).

Dissimilar to *ICC,* the FNBS in this case can hardly be treated as a final decision on disputed assessment since respondent failed to protest the FAN it requested and received from the BIR.

Respondent nonetheless argues that the BIR's FNBS falls under the *second* part of Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, *i.e.,* other matters arising from the NIRC, as amended, over which the Court in Division has jurisdiction.

We disagree.

For one, the existence of a collection letter, such as the BIR's FNBS does not automatically fall under other matters arising under

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30 Boldfacing supplied.

the NIRC, as amended. Again, in *VDJI,* Domingo received the BIR's PCL referring to the FAN. Next, it requested and received from the BIR, for copies of such FAN. It appealed said *FAN and PCL* to the CTA in Division. Notwithstanding Domingo's challenge on the *FAN and PCL,* the Supreme Court considered *VDJI* as a case falling under the *first* part of Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282. Hence, Domingo's failure to institute a prior administrative protest with the BIR resulted in the CTA in Division's lack of jurisdiction. Owing to the striking similarity of the facts of this case,[31] and that of *VDJI,* they must be treated, much more, be ruled alike.

For another, our jurisdiction over other matters arising from the NIRC, as amended, in relation to a tax collection, was interpreted in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue (PJI),*[32] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc. (Hambrecht),* [33] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc. (QLDI),*[34] and *Commissioner of Internal Revenue v. Bank of the Philippine Islands (BPI).*[35] Yet, these cases may not be applied here, due to disparity in factual milieu.[36] Consider:

First, in *PJI,* the event which triggered the filing of an appeal to the CTA was the Warrant of Distraint and/or Levy (WDL) No. 33-06-046. The taxpayer therein likewise raised the issue of the validity of the waiver involved therein. *PJI* declared that questions on the validity of the WDL and waiver fall within "other matters" arising under the NIRC, as amended, 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.**

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31 See discussion on pages 8-9 of this Decision.
32 G.R. No. 162852, December 16, 2004.
33 G.R. No. 169225, November 17, 2010.
34 G.R. No. 258947, March 29, 2022.
35 G.R. No. 227049, September 16, 2020.
36 *PJI* and *Hambrecht* were cited by the Court in Division as bases for the exercise of jurisdiction in this case.

...[37]

Unlike in *PJI*, and as earlier discussed,[38] the circumstance leading to respondent's appeal with the Court in Division was principally the FAN, and *not* the FNBS.

Second, in *Hambrecht*, the CTA, both in Division, and *En Banc* found that the taxpayer therein failed to timely file a valid administrative protest to the final assessment, resulting in the incontestability thereof. It nonetheless held that the BIR may not collect the taxes assessed therein because of prescription. On appeal, the CIR posited that the CTA lacks jurisdiction, because the assessments had attained finality. In holding the CIR's position erroneous, the Supreme Court ruled:

> 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.
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited 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).
>
> In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223(c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. ...
>
> ...
>
> Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.
>
> 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 separate and independent of

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[37] Boldfacing supplied.
[38] *Supra* notes 13-17.

each other. 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.

Hambrecht added that the issue of *prescription of collection of taxes* is separate and distinct from the validity of the assessment itself:

> To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.
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> ...

Similar to *Hambrecht*, the tax assessment in *QLDI* attained finality because of lack of prior valid administrative protest with the BIR. It was nevertheless held that the issue on *prescription of tax collection* may be addressed separately from the matter of the final assessment's validity.

The thrust of *Hambrecht* and *QLDI* is that the issue of prescription of collection of taxes may be decided by the CTA under other matters arising from the NIRC, as amended, notwithstanding the immutability of a final assessment. Truly, what matters in prescription of collection of taxes is *when* the assessment was made, and whether such collection was made within the period prescribed by law. *Review on the validity of a final assessment is not necessary to determine prescription of tax collection;*[39] *thus, these matters may be decided separately.*

Contrasted to *Hambrecht* and *QLDI*, respondent's ground for the supposed nullity of the BIR's FNBS is *not* because the collection of taxes was barred by prescription. Rather, said FNBS is purportedly illegal because the FAN from which the same was based is allegedly void. Indeed, the propriety of the BIR's FNBS is inextricably

39 In *Bank of the Philippine Islands (Formerly: Far East Bank and Trust Company) v. Commissioner of Internal Revenue*, G.R. No. 174942, March 7, 2008, the Supreme Court held that it need not rule on the validity of a final assessment since the collection of tax made by the government has prescribed.

interwoven with the validity of said FAN. *Review of such final assessment is crucial to determine the soundness of the collection measure; hence, these matters may not be addressed separately.* For us to review a final assessment, a prior administrative protest thereto with the BIR should be filed by respondent, and a decision, or inaction thereon by petitioner or her duly authorized representative must ensue, both of which were wanting in this case.

Third, in *BPI,* the taxpayer's appeal to the CTA in Division was to *solely* impugn the BIR's WDL's issuance and implementation. The CTA, both division and *En Banc,* cancelled such WDL. On appeal, the CIR contended that said taxpayer failed to appeal her FDDA, resulting in the CTA's lack of jurisdiction. Finding the CIR's contention without merit, the Supreme Court said:

> .... As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.
>
> The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

Undoubtedly, the taxpayer in *BPI* solely impugned before the CTA in Division, the BIR's WDL, which falls under other matters arising from the NIRC, as amended. The issue to be resolved by the CTA in Division is the validity of the collection measure alone, and nothing else.

What sets this case apart from *BPI* are: *one,* respondent challenged before the Court in Division the propriety of the FAN;[40] and *two,* the issues to be resolved by the Court in Division in this case are different—the legality of the tax assessments.[41]

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40 *Supra* notes 13-17.

41 *Supra* note 16.

Ergo, based on *VDJI,* and despite the existence of the BIR's FNBS, this case does *not* fall under other matters arising from the NIRC, as amended, spelled out in the *second* part of Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282.

Respondent whines that it never had the opportunity to administratively protest the final assessment as it failed to receive any of the assessment documents from the BIR; thus, its direct recourse to the Court in Division is justified.

We differ.

To repeat, respondent requested copies of the FAN from the BIR and were received by it on August 1, 2018. It had every opportunity to administratively protest the same with the BIR. Yet, it failed to do so. Precisely, the adverse effect of such failure, expressed in *Commissioner of Internal Revenue v. Court of Tax Appeals Third Division and Citysuper Incorporated,*[42] merits iteration as a proper closing:

> When a taxpayer files a Petition for Review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and the Court of Tax Appeals has no jurisdiction.

WHEREFORE, the Petition for Review filed on July 29, 2021, by the Commissioner of Internal Revenue, is **GRANTED**. The Decision dated January 11, 2021 and Resolution dated June 16, 2021 of the Court in Division are **REVERSED** and **SET ASIDE**. The Petition for Review filed by Four Seas Trading Corporation in CTA Case No. 9915 is **DISMISSED,** for lack of jurisdiction.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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42 G.R. No. 239464, May 10, 2021.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

With due respect, please see Dissenting Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, please see Dissenting Opinion.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

With due respect, please see Dissenting Opinion.
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2507** (CTA Case No. 9915)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
FOUR SEAS TRADING CORPORATION, Respondent.	Promulgated: APR 05 2023 10:32a.m.

x- -x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I dissent from the majority ruling that the Petition for Review in CTA Case No. 9915 must be dismissed for lack of jurisdiction.

To recall, the Second Division held in its Decision[1] dated January 11, 2021 that it has jurisdiction, Respondent having filed an appeal to the Court of Tax Appeals ("CTA") within thirty (30) days from its receipt on July 31, 2018 of the Final Notice Before Seizure[2] ("FNBS") dated on even date.

The position espoused by the *ponencia* is that Respondent should have filed an administrative protest to the Formal Assessment Notice ("FAN") dated

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1 Docket, pp. 1182-1203.
2 *Id.*, Exhibit "P-16", p. 889.

January 12, 2018[3] when it was given a copy of the same after the receipt of the FNBS. Since Respondent failed to do this, its Petition for Review with the Second Division was premature.

With due respect, I beg to differ.

Indeed, Section 3.1.4 of Revenue Regulations ("RR") No. 12-1999[4], as amended by RR No. 18-2013[5] provides that "[i]f the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable." The jurisdictional requirement of filing of the protest to the FAN however presupposes that the normal course of events happened, to wit:

1) the issuance of a Letter of Authority ("LOA");
2) the issuance of a Request for Accounting Records;
3) the issuance of a Notice for Informal Conference (in some cases);
4) the submission of documents by the taxpayer;
5) the issuance of a Preliminary Assessment Notice ("PAN");
6) the filing of a reply/protest to the PAN by the taxpayer;
7) the issuance of a FAN;
8) the filing of a protest to the FAN by the taxpayer; and
9) the issuance of a Final Decision on a Disputed Assessment (FDDA) by the Commissioner of Internal Revenue ("CIR") or his inaction.[6]

Once the assessment stage of a particular tax case is completed, collection proceeds. The Bureau of Internal Revenue ("BIR") may now enforce collection through the issuance of collection letters and/or writs, including but not limited to Preliminary Collection Letter ("PCL"), FNBS, and Warrant of Distraint and/or Levy and Garnishment.

In a long line of cases[7], this Court exercised its jurisdiction over cases which question the validity of collection of national internal revenue taxes,

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[3] *Id.*, Exhibit "P-13", pp. 897-908.

[4] 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, September 06, 1999.

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

[6] *See* Revenue Audit Memorandum Order No. 1-00, Updated Handbook on Audit Procedures and Techniques, Volume I (Revision- Year 2000), March 17, 2000 and Revenue Regulations ("RR") No. 12-1999, as amended by RR No. 18-2013.

[7] *See* Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc., CTA EB Case No. 2313 (CTA Case No. 9367), March 16, 2022; Penned by Associate Justice Jean Marie A. Bacorro-Villena, concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Maria Rowena Modesto-San Pedro, Marian Ivy F.

following the Supreme Court cases of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[8], *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[9] ("*CIR v. Hambrecht*"), *Commissioner of Internal Revenue v. Bank of the Philippine Islands*[10] ("*CIR v. BPI*"). The High Court explained that this was based on the second part of Section 7(a)(1) of Republic Act ("R.A.") No. 1125[11], as amended by R.A. No. 9282[12], to wit:

> "**Sec 7.** *Jurisdiction.* – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue**[.]"[13]

Simply put, the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. It also covers other cases that arise out of the National Internal Revenue Code (NIRC) of 1997, as amended, or related laws administered by the BIR, which necessarily includes the issue of collection.

A perusal of the factual antecedents of this case demonstrates that the process in the issuance of a deficiency tax assessment and its collection did not proceed by the usual route.

On February 03, 2016, Respondent received LOA dated January 19, 2016[14], authorizing the BIR to examine its books of accounts for all internal revenue taxes for calendar year 2014. The LOA was accompanied with a

Reyes-Fajardo and Lanee S. Cui-David, Presiding Justice Roman G. del Rosario with Concurring Opinion.

8 G.R. No. 162852, December 16, 2004.
9 G.R. No. 169225, November 17, 2010.
10 G.R. No. 227049, September 16, 2020.
11 An Act Creating the Court of Tax Appeals, June 16, 1954.
12 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.
13 *Emphasis supplied.*
14 Docket, Exhibit "P-4", p. 874.

Checklist of Requirements[15]. Thereafter, the following series of correspondences were exchanged between Petitioner and Respondent – First Notice for Presentation of Records dated March 29, 2016[16] and Letter-Submission of Documents dated February 10, 2016[17], April 08, 2016[18], April 14, 2016[19], April 11, 2017[20] and April 20, 2017[21].

The next correspondence received by Respondent from the BIR was a Letter[22] dated June 29, 2018 informing the company that it was selected as a Tax Account Management Program (TAMP) taxpayer. Afterwards, Respondent was given the FNBS dated July 31, 2018 on even date, signed by Chief of the Collection Division of Revenue Region No. 6 Manila, demanding payment of the assessment for calendar year 2014 within ten (10) days, failure of which will result to the issuance of a Warrant of Distraint and/or Levy and Garnishment already prepared to enforce collection.

Consequently, Respondent sent on August 01, 2018 a Letter[23] to the BIR dated July 31, 2018 requesting copies of the PAN dated December 20, 2017[24], FAN dated January 12, 2018 and PCL dated July 31, 2018[25]. On even date, Respondent was given photocopies of the PAN and FAN, but not the PCL.[26]

From above, it can be gathered that the assessment proceeding for Respondent's deficiency taxes for the calendar year of 2014 was already concluded. Since no protest to the FAN was received, the BIR treated the assessment as already final, executory and demandable. The FNBS was issued for this reason, Respondent's docket already given to the Collection Division. Clearly, the BIR's audit was now in the collection stage.

Thus, Respondent cannot be faulted when it decided not to file a protest to the FAN. In the first place, Respondent asked for copies of the PAN and FAN in order to have knowledge of the assessment, since it was not able to receive any copies thereof. As far as Respondent was concerned, the procedure for the stages for assessment was already finished (*i.e.*, the service of assessment and taxpayer's reply to the assessment). Secondly, Respondent was only given photocopies of the PAN and FAN, not their original copies. This point to an inescapable conclusion that the bestowal of the copies of the assessment is a

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15 *Id.*, Exhibit "P-5", p. 875.
16 *Id.*, Exhibit "P-6", p. 876.
17 *Id.*, Exhibit "P-7", p. 877.
18 *Id.*, Exhibit "P-8", p. 878.
19 *Id.*, Exhibit "P-10", p. 881.
20 *Id.*, Exhibit "P-9", pp. 879-880.
21 *Id.*, Exhibit "P-11", pp. 882.
22 *Id.*, Joint Stipulation of Facts and Issues, Facts Admitted, Par. 5, p. 572.
23 *Id.*, Exhibit "P-14", p. 887.
24 *Id.*, Exhibit "P-12", pp. 883-886.
25 As stated in Respondent's Letter to the BIR dated July 31, 2018.
26 *See* Docket, Judicial Affidavit of Josephine B. Poche, Exhibit "P-3", Question No. 30 and Respondent's Letter to the BIR dated August 02, 2018, Exhibit "P-15", pp. 866-873 and 888 respectively.

mere afterthought on the part of BIR and should not be really treated as valid service of the PAN and FAN to Respondent. More importantly, filing a protest to the FAN would be unnecessary and idle. The BIR already made a "decision" on the assessment, the FNBS. The issuance of the same suggests that any request for reconsideration or reinvestigation of the assessment is already hopeless and will just be rejected.

Since the audit for Respondent's books is now in the collection stage, the second part of Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282, "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue" shall apply. Similar to *CIR v. Hambrecht* and *CIR v. BPI*, the issue for the CTA to resolve in the case at bar was the propriety not of the assessment issued by the BIR but of a tax collection measure implemented against Respondent.

Additionally, it could be said that the Second Division's jurisdiction over the instant case is derived from Section 7(c)(1) of R.A. No. 1125, as amended by R.A. No. 9282. The provision states:

> "**Sec 7.** *Jurisdiction.* – The CTA shall exercise:
>
> xxx xxx xxx
>
> c. Jurisdiction over tax collection cases as herein provided:
>
> 1. **Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties**: Provided, however, That collection cases <u>where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court</u>."[27]

Verily, when the principal amount of taxes and fees, exclusive of charges and penalties, claimed is One million pesos (Php1,000,000.00) or more, the tax collection case, whether the tax is a local tax or a national internal revenue tax, is under the exclusive original jurisdiction of the CTA. The total amount due as stated in the FNBS for the case under consideration is Php34,235,794.91. This is more than the One million pesos limit and as such falls under the jurisdiction of the CTA.

[27] *Emphasis and underscoring supplied.*

As to the matter on Respondent's violation of the doctrine of exhaustion of administrative remedies, suffice it to say that the principle of exhaustion of administrative remedies may be disregarded when there is a violation of due process or when to require exhaustion of administrative remedies would be unreasonable.[28] The BIR violated Respondent's due process rights when it did not properly serve the PAN and FAN during the assessment process. On the other hand, as discussed earlier, to require Respondent to file a protest to the FAN would be an exercise in futility. In *International Container Terminal Services, Inc. v. City of Manila, Et. Al.* [29], the Supreme Court held that "[i]f a party can prove that the resort to an administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine of exhaustion of administrative remedies will not apply."

Lastly, I am not unaware of *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[30] ("*CIR v. V.Y. Domingo*"). However, there are obvious differences in the factual milieu between *CIR v. V.Y. Domingo* and this case and the former should not be applied. In *CIR v. V.Y. Domingo*, the BIR validly issued the PAN and the taxpayer was able to file a reply/protest to the PAN. In other words, there was an assessment which the taxpayer was able to dispute. In this case, there was none. Here, the PAN was not validly served to Respondent and thus no reply/protest was filed thereto.

Besides, in the recent case of *Commissioner of Internal Revenue v. CTA Second Division and QL Development, Inc.*[31] the High Court ruled that notwithstanding the taxpayer's failure to file a valid protest to the FAN, the CTA can still exercise its jurisdiction under the term "other matters" of Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282.

From all the foregoing, I vote to affirm the Decision dated January 11, 2021 and Resolution dated June 16, 2021 of the Second Division in CTA Case No. 9915.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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28 *See* Kilusang Mayo Uno, Et. Al. v. Hon. Benigno Simeon C. Aquino III, Et. Al., G.R. No. 210500, April 02, 2019.
29 G.R. No. 185622, October 17, 2018.
30 G.R. No. 221780, March 25, 2019.
31 G.R. No. 258947, March 29, 2022.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* *-versus-* **FOUR SEAS TRADING CORPORATION,** *Respondent.*	**CTA EB NO. 2507** (CTA Case No. 9915) Present: **DEL ROSARIO, P.J.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.* Promulgated: APR 05 2023 10:32a.m.

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With utmost respect, I withhold my assent to granting the instant Petition for Review and to the consequent dismissal of CTA Case No. 9915 for lack of jurisdiction.

The *ponencia* anchored the dismissal of CTA Case No. 9915 on the first part of ***Sections 7(a)(1) and (2) of R.A. No. 1125 as amended by R.A. No. 9282*** pertaining to the jurisdiction of the CTA to review, by appeal, decisions of the CIR on "disputed assessments".

I respectfully submit that the CTA Division can exercise jurisdiction over the present case pursuant to its exclusive appellate jurisdiction to review, by appeal, *"the decisions of the CIR in cases involving other matters arising under the NIRC or other laws administered by the BIR"* as conferred in ***Section 7(a)(1) of Republic Act (R.A.) No. 1125 as amended by R.A. No. 9282.***

<u>The *V.Y. Domingo Case* is not applicable in the instant case.</u>

In concluding that the first part of ***Sections 7(a)(1) and (2) of R.A. No. 1125 as amended by R.A. No. 9282*** on disputed assessments apply, the *ponencia* explained that the factual antecedents of the instant case closely resembled the factual circumstances in the ***V.Y. Domingo Case*** and that the ruling in ***V.Y. Domingo Case*** should thus be applied.

I respectfully disagree.

Briefly, the factual antecedents of the ***V.Y. Domingo Case*** are as follows:

1. On 9 September 2009, the Bureau of Internal Revenue ("BIR") issued a Preliminary Assessment Notice ("**<u>PAN</u>**") against V.Y. Domingo, assessing the latter the total amount of ₱2,781,844.21 representing deficiency income tax and value-added tax, inclusive of interest, for the taxable year 2006.
2. V.Y. Domingo filed a **<u>Request for Re-evaluation/Re-investigation and Reconsideration</u>**, dated 17 September 2009, with the Regional Director of BIR - Revenue Region No. 6, requesting a "thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the Preliminary Assessment Notice."
3. V.Y. Domingo then received a Preliminary Collection Letter ("**<u>PCL</u>**"), dated 10 August 2011, from the Revenue District Office ("RDO") No. 28 - Novaliches, informing it of the existence of Assessment Notice No. 32-06-IT-0242 and Assessment Notice No. 32-06-VT-0243 ("**<u>FANs</u>**"), both dated 18 November 2010, for collection of its tax liabilities in the amounts of ₱1,798,889.80 and ₱1,365,727.63, respectively, for a total amount of ₱3,164,617.43.
4. On 12 September 2011, V.Y. Domingo sent a letter to the BIR RDO No. 28 in Quezon City, requesting certified true copies said FANs.
5. On 15 September 2011, V.Y. Domingo received the requested copies of such notices.
6. On September 16, 2011 a Petition for Review with the CTA in Division, under ***Section 7(1) of R.A. No. 1125 and Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***, praying that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243, dated 18 November 2010, and the PCL, dated 10 August 2011, be declared null and void, cancelled, withdrawn, and with no force and effect, for allegedly having been issued beyond the prescriptive period for assessment and collection of internal revenue taxes.

Meanwhile, the settled facts in the instant case as narrated in the *ponencia* are as follows:

1. On 3 February 2016, respondent received a Letter of Authority ("**LOA**") authorizing the examination of respondent's books of accounts and other accounting records for all internal revenue taxes for the period 1 January 2014 to 31 December 2014;
2. Respondent then submitted several documents in **response to the said LOA**;
3. On 31 July 2018, respondent received a Final Notice Before Seizure ("**FNBS**") stating that it had deficiency taxes for CY 2014 in the total amount of ₱34,235,794.91;
4. On 1 August 2018, respondent requested copies of the Preliminary Assessment Notice ("**PAN**"), Formal Assessment Notice ("**FAN**"), and Preliminary Collection Letter ("**PCL**"); and
5. On 30 August 2018, respondent filed the present Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.

From the foregoing, the factual antecedents of the ***V.Y. Domingo Case*** and the present case has significant differences particularly on the following:

V.Y. Domingo Case	***CIR v. Four Seas Trading Corporation***
A PAN was issued by the CIR and duly served to the taxpayer	No PAN was issued to the taxpayer
After receipt of the PAN, the taxpayer was given the opportunity to file its Request for Re-evaluation/Re-investigation and Reconsideration	Since no PAN was issued to the taxpayer, it was not given an opportunity to reply thereto
PCL was issued to the taxpayer after it filed its Request for Re-evaluation/Re-investigation and Reconsideration	FNBS was issued to the taxpayer after submission of several documents in response to the LOA
Upon receipt of the PCL, the taxpayer requested the copies of the FANs from the BIR	Upon receipt of the FNBS, the taxpayer requested copies of the PAN, FAN, and PCL.

Among the noted differences in factual circumstances, the non-issuance of the PAN is the most crucial, as it goes into the due process required in every assessment and, consequently, to the validity of the assessment which ultimately affects the validity of any collection efforts of the CIR.

Section 228 of the Tax Code is clear that the taxpayer should be informed in writing of the law and the facts on which the assessment is based; otherwise, the assessment is void:

> "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**: provided, however, That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
> (d) When the excise tax due on exciseable articles has not been paid; or
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> The taxpayers shall be **informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void**.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings."
> (Emphasis and underscoring supplied.)

In ***Prime Steel Mill, Inc. v. Commissioner of Internal Revenue***,[1] the Supreme Court reiterated the well-settled principle enunciated in ***Commissioner of Internal Revenue v. Metro Star Superama, Inc.***[2] which emphasized on the importance of a PAN, *viz.*:

> "In the oft-cited case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, the Court held that **the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment** and **the BIR must strictly comply with the requirements laid down by the law and by its own rules**.
>
> The **importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time** without need for the issuance of a FAN."
> (Emphasis and underscoring supplied.)

This distinction is crucial given the importance of a PAN. Thus, unlike in ***V.Y. Domingo Case*** where the validity of the assessment can be upheld, the same cannot be applied to the instant case.

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[1] G.R. No. 249153, 12 September 2022.
[2] G.R. No. 185371, 8 December 2010.

The Burden to prove receipt of PAN, FAN, and FLD is shifted to the CIR.

The *ponencia* further explains that the ***V.Y. Domingo Case*** made clear that ***Section 228 of the Tax Code*** does not qualify how the taxpayer shall receive the notice from the BIR, whether through a valid service or the taxpayer's own request or volition.

I respectfully disagree with this conclusion.

I am of the firm view that ***V.Y. Domingo Case*** did not make a categorical pronouncement that the manner of informing the taxpayer of the facts and law on which the assessment is made may be in any form. The ***V.Y. Domingo Case*** simply pronounced that the PCL is not the CIR's decision on the disputed assessment which can be appealed to the CTA. There is a "disputed assessment" to speak of unlike in the present case.

I echo the ruling of the Court in Division in CTA Case No. 9915 that in view of respondent Four Seas' denial of receipt of the PAN, FLD, and FAN, the burden is shifted to the CIR to prove that the same was received by Four Seas or by its authorized representative but, the same was not sufficiently proven by the CIR, *viz.*:

> "In any event, establishing petitioner's address is one thing; but whether the subject notices were properly served to petitioner in the said address is quite another.
>
> ...
>
> Based on the foregoing provisions, one of the modes of service of the PAN, FLD, and FAN is by service through registered mail. As for such mode of service, **the same must be made by sending the said notices "with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."** Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office **must contain sufficiently identifiable details of the transaction.** Furthermore, it is required that the **"[t]he server shall accomplish the bottom portion of the notice" and "shall also make a written report under oath before a Notary Public or any person authorized to administer oath[s] under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person . . . who received the same and such other relevant information."**
>
> In addition, it has been settled that **while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> Considering that **<u>petitioner directly denies due receipt of the subject notices, the burden was shifted to respondent to prove that the</u>**

same were indeed received by petitioner or by its authorized representative.

It can, thus, be inferred from the foregoing that **the only evidence adduced by respondent in proving the fact of mailing are the copies of the corresponding Registry Receipts** issued by the Central Post Office of Manila when the mailed matters containing the subject PAN and FAN/FLD were supposedly posted by the BIR on December 27, 2017 and March 20, 2018, respectively. **Unfortunately, these hardly suffice to prove that the said notices were indeed served and received by petitioner or by any of its authorized representative/s, pursuant to the above-mentioned rules. These Registry Receipts merely proved the fact of mailing, and nothing more.** The glaring fact remains that nowhere can it be seen from the evidence presented that the said PAN, Assessment Notices, and FLD were actually served and received by petitioner or by any of its authorized representative. Particularly, there is no indication in the subject Registry Receipts that the signatures respectively appearing therein refer to petitioner or its authorized representative. On this matter, the recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc. (T Shuttle case)* is on point, to wit:

...

Similar to the foregoing case, respondent's [CIR] witness, Mr. Narcoda, had also expressly admitted during cross-examination that the BIR has no proof that the said assessment notices were actually received by petitioner [Four Seas], viz.:

...

Furthermore, it must be pointed out that a closer examination of the same Registry Receipts reveals that **these documents do not contain any identifiable details of the transaction.** Moreover, there is no showing that the server of the subject PAN, Assessment Notices, and FLD accomplished the respective bottom portion thereof; and that **written reports under oath were made, setting forth the manner, place and date of service, the name of the person who received the same notices, and such other relevant information.** As already stated, these are all required under the earlier quoted *Section 3.1.6 (iii) of RR No. 12-99, 73 as amended by RR No. 18-2013*. Such being the case, **respondent [CIR], not only failed to prove that petitioner actually received the said notices, he likewise neglected to show compliance with the requirements under the BIR's own rules and regulations.**"
(Emphasis supplied; citations omitted)

All told, I VOTE to **DENY** the instant *Petition for Review* and **AFFIRM** the Assailed Decision dated 11 January 2021 and Assailed Resolution dated 16 June 2021 in CTA Case No. 9915.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

FOUR SEAS TRADING CORPORATION,
Respondent.

CTA EB No. 2507
(CTA Case No. 9915)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:

APR 05 2023 10:32 a.m.

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DISSENTING OPINION

FERRER-FLORES, J.:

With due respect, I disagree with the *ponencia* that the Petition for Review in CTA Case No. 9915 should be dismissed for lack of jurisdiction.

In the Decision, it was pointed out that the Court in Division has no jurisdiction over the instant case considering that there was neither a decision or inaction on the part of the Commissioner pursuant to the first part of Section 3(a)(1) and (2), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),[1] nor does it fall within the second part these sections.

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[1] **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:

According to the *ponencia*, respondent primarily challenged the Formal Assessment Notice (FAN) it requested and received from the Bureau of Internal Revenue (BIR) covering calendar year (CY) 2014 based on the following: (1) aim in filing the petition for review with the Court in Division was to prevent the FAN from attaining finality; (2) the period to appeal with the Court in Division was reckoned from receipt of said FAN on August 1, 2018; (3) the nature of the case in the assailed Decision prays for the cancellation and withdrawal of the FAN issued by petitioner against respondent for its alleged deficiency taxes for CY 2014 in the aggregate amount of ₱34,325,794.91, inclusive of interests, etc.; (4) the issues jointly raised by petitioner and respondent or resolution of the Court in Division all pertain to the validity of the FAN; and (5) the specific prayer in respondent's Petition for Review seeks to invalidate the FAN.

Considering that respondent appealed the FAN before the Court in Division, it was found that respondent's ground for the supposed nullity of the Final Notice Before Seizure (FNBS) was because the FAN from which it is based is void; therefore, the propriety of the FNBS is inextricably interwoven with the validity of the FAN. Accordingly, review of the FAN is crucial to determine the soundness of the collection measure and may not be addressed separately. The *ponencia*, thus, ruled that in order to review the FAN, there should have been a prior protest thereto filed with the BIR, in compliance with the doctrine of exhaustion of administrative remedy, and a decision or inaction must ensue.

I respectfully beg to differ.

At the outset, I agree with the discussion of Justice Jean Marie A. Bacorro-Villena in her Dissenting Opinion. Indeed, the Court in Division has jurisdiction to entertain respondent's appeal under the second part of Section 3(a)(1) of the RRCTA.

As aptly stated by Justice Villena and Justice Ma. Belen M. Ringpis-Liban in their Dissenting Opinions, petitioner had already concluded the assessment proceedings and the assessment was treated by the BIR as final, executory and demandable, which was the reason why the FNBS was issued. Respondent can no longer be expected to file an administrative protest against

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

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action**: xxx (*Emphasis ours*)

the FAN, when it only received the FNBS pursuant to an alleged assessment, and was not duly served with a PAN or a FAN. Clearly, any protest to an assessment, if the petitioner had already initiated its collection proceedings, would be useless and in vain as petitioner already has his own position on the matter.

As fittingly pointed out by Justice Liban, respondent's assessment process did not proceed by the usual route. In this case, respondent received the FNBS before it received any assessment notice.

Still, the position of the *ponencia* is to require respondent to file a protest to the FAN when it already received the FNBS, allegedly based on the FAN. It is my position that, on the contrary, it would not be fair to require respondent to comply with the usual procedure when petitioner himself did not comply, i.e., commencing the collection proceedings without even ensuring that the assessment notices were duly served and actually received by respondent. Such is a clear violation of due process, a right protected by our Constitution.

In the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*,[2] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the **Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**" (*Emphasis ours*)

Assuming respondent still has to protest to the FAN it requested and received, the procedure is still flawed; therefore, the assessment is void and, as such, collection efforts made pursuant thereto should have no valid legal effect.

Justice Maria Rowena Modesto-San Pedro, in her Dissenting Opinion, has explained the importance of the issuance of a PAN, and the corresponding

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[2] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

opportunity to reply thereto, citing the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc,*[3] where the Supreme Court reiterated:

> "xxx that the sending of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules.
>
> **The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of FAN.**" (*Emphasis ours*)

Based on the foregoing, the PAN is necessary so that the taxpayer and the BIR may settle the case at the earliest possible time without the need for the issuance a FAN. Yet, in the instant case, it is already too late for a settlement as the BIR had already initiated its collection, a step way after the issuance of a PAN; hence, replying thereto or even protesting to the FAN is already futile.

This Court has already consistently ruled that, considering that the FAN was issued without waiting for the lapse of the 15-day period the taxpayer to file a reply to the PAN, the assessments are void since there is a violation of the taxpayer's right to due process.[4]

In *Roca Security and Investigation Agency, Inc. vs. Commissioner of Internal Revenue*,[5] the CTA *En Banc* elucidated the importance of observing the fifteen (15)-day period within which the taxpayer may respond to the PAN before the BIR may issue a FAN, and the consequence of failure to do so, *viz*:

> "It cannot also be denied that with the premature issuance of the FLD on April 12, 2013, **any argument or evidence adduced by petitioner in support of its protest against the PAN was pointless, if not moot, for at that time, respondent was already dead-set or bent on upholding the assessment as contained in the PAN. This indubitably constitutes denial of due process as petitioner was not given the opportunity to dispute and present evidence against the PAN, before the final assessment was issued.**"

Equally, protest to the FAN, in this case, is pointless, if not moot, for at the time of respondent's receipt of the PAN and FAN, the FNBS was already issued and petitioner is already set in his collection of the alleged deficiency taxes.

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[3] G.R. No. 185371, December 8, 2010.
[4] *Commissioner of Internal Revenue vs. Airglobe, Inc.*, CTA EB Case No. 2348, May 23, 2022;
[5] CTA EB No. 1523, March 7, 2018.

In this regard, my stance is that we cannot require respondent to file a protest to the FAN before elevating the matter to this Court, when it was not even given an opportunity to reply to the PAN which it allegedly received a day before the claimed receipt of FAN, more so when FNBS was already issued. The FAN, having been received a day after the PAN was provided to the taxpayer, is already a clear violation of due process, thereby rendering the assessment void, and the corresponding collection without any effect.

Moreover, the assessment of the alleged deficiency taxes contained in the PAN and FAN have already prescribed. Respondent is being assessed for income tax, value-added tax, expanded withholding tax and improperly accumulated earnings tax covering CY 2014. Clearly, the last day to assess for income tax, which has the last filing date among all the tax types assessed, would be April 2018. If the actual receipt of the FAN on August 2, 2018 is to be considered, the assessment had already prescribed;[6] hence, the assessment is still void and the corresponding deficiency taxes cannot be collected.

I also agree with Justice San Pedro's observation that the case of *V.Y. Domingo* is not on all fours with the instant case considering that most factual circumstances differ. Unlike in the case of *V.Y. Domingo* where the taxpayer received the PAN and the taxpayer had been initially apprised of its tax liabilities, respondent here is not aware of any possible assessment issued against it until it received the FNBS. Since, the period to assess respondent for CY 2014 taxes had already lapsed, respondent is no longer expecting any assessment from petitioner.

Finally, the assailed Decision dated January 11, 2021 and the assailed Resolution dated June 16, 2021 have extensively discussed the violation of due process when respondent denied receipt of the assessment notices and petitioner failed to overcome the burden of proving that the same were indeed received by respondent or by its authorized representative.

Based on the foregoing, the assessment is void. Evidently, petitioner believes that the assessment stage had already concluded, which is why he issued an FNBS. Even if the assessment has become final, executory and demandable, still the FNBS will have no legal effect considering that the assessment is void to begin with.

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[6] **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.

All told, I VOTE to **DENY** the instant Petition for Review and **AFFIRM** the assailed Decision dated January 11, 2021 and assailed Resolution dated June 16, 2021 in CTA Case No. 9915.

CORAZON G. FERRER-FLORES
Associate Justice