REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

E-POWER SECURITY AND INVESTIGATION SERVICES, INC., Petitioner,	**CTA CASE NO. 10143**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, JJ.
HON. CAESAR R. DULAY – IN HIS CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE,[1] Respondent.	Promulgated: NOV 21 2022 12:20 P.M.

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DECISION

***DEL ROSARIO, P.J.*:**

This resolves the Petition for Review praying for the cancellation and setting aside of the assessment against petitioner for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and compromise penalty in the amounts of ₱10,374,311.05, ₱4,517,976.89, ₱26,930.90, and ₱37,000.00, respectively, or a total amount of ₱14,956,218.84, inclusive of interest, for taxable year (TY) 2015.

THE PARTIES

Petitioner **E-Power Security and Investigation Services, Inc.** is a private corporation organized and existing under Philippine Law, with principal place of business at 3rd Floor, AA Building, No. 125 Bonny Serrano Ave., Brgy. Socorro (Murphy), Cubao, Quezon City,

[1] The incumbent CIR is the Honorable Lilia C. Guillermo.

and is engaged, among others, in the business of providing security guard services to various clients.[2]

Respondent is the **Commissioner of Internal Revenue (CIR)**, the government official and functionary principally charged with the implementation, enforcement and collection of internal revenue taxes in the Philippines, with official station at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On July 12, 2017, OIC-Regional Director Marina C. De Guzman of BIR Revenue Region No. 7, issued a Letter of Authority authorizing Revenue Officer (RO) Alberto Pengson, Jr. and Group Supervisor (GS) Rodorico Peralta to examine the books of accounts and other accounting records of petitioner for all national internal revenue taxes for the period from January 1, 2015 to December 31, 2015.[4]

A Notice for Informal Conference (NIC) was issued on February 21, 2018, which petitioner received on February 27, 2018.[5]

On March 27, 2018, Mildred O. Templo, Chairperson of petitioner's Board of Directors, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (Waiver of Prescription), extending the period to assess until December 31, 2019. The notarized Waiver was accepted by Revenue District Officer Albino M. Galanza on April 21, 2018.[6]

Upon the recommendation of RO Pengson and GS Peralta,[7] a Preliminary Assessment Notice (PAN) with Details of Discrepancies was issued on November 16, 2018,[8] which was received by Herdel Dela Cruz, petitioner's administrative staff, on November 22, 2018.[9]

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[2] Petition for Review, Docket, Vol. I, p. 12; Pre-Trial Order, Docket, Vol. III, p. 991.
[3] Petition for Review, Docket, Vol. I, pp. 12-13; Pre-Trial Order, Docket, Vol. III, p. 991.
[4] Exhibit "R-1", Docket, Vol. III, p. 1485.
[5] Exhibit "R-4", Docket, Vol. III, p. 1492.
[6] Exhibit "R-3", Docket, Vol. III, p. 1491.
[7] Exhibit "R-5", Docket, Vol. III, p. 1495.
[8] Exhibits "P-7", "P-7-A" and "P-7-B", Docket, Vol. II, pp. 459-464; Exhibit "R-6", Docket, Vol. III, pp. 1496-1501.
[9] Exhibit "R-6", Docket, Vol. III, pp. 1496-1501; Exhibit "R-7", Docket, Vol. III, p. 1502.

On December 13, 2018, respondent issued Formal Letter of Demand (FLD) No. 040-2018-B075-15 with Details of Discrepancies[10] and corresponding four (4) Assessment Notices (ANs),[11] demanding the payment of deficiency income tax, VAT, EWT and compromise penalty in the amounts of ₱10,374,311.05, ₱4,517,976.89, ₱26,930.90, and ₱37,000.00, or a total amount of ₱14,956,218.84, inclusive of interest, on or before January 14, 2019. The FLD was received by the same Herdel Dela Cruz on December 17, 2018.[12]

On March 5, 2019, a Preliminary Collection Letter was issued and sent through registered mail to petitioner's address.[13]

A Final Notice Before Seizure dated March 18, 2019 was likewise issued and sent through registered mail to petitioner's address.[14]

On April 12, 2019, petitioner submitted a Letter of even date to BIR Revenue Region No. 7, requesting for reconsideration or reinvestigation of the assessment per the FLD.[15]

On May 3, 2019, petitioner sent a Letter dated April 22, 2019 to the Office of the CIR requesting for a review of the computation of the assessed income tax of petitioner, and offering to cooperate on a compromise settlement.[16]

On May 6, 2019, Marivic G. Tulio, Chief of the Collection Division of BIR Revenue Region No. 7, issued a Letter to petitioner suggesting that it pay its deficiency income tax and VAT at the compromise rate of 40% of the basic tax, subject to approval of the National Evaluation Board, and for it to avail of Tax Amnesty under Republic Act (RA) No. 11213.[17]

BIR Assistant Commissioner Alfredo V. Misajon sent a Letter dated May 8, 2019 referring petitioner's Letter dated April 22, 2019 to BIR Revenue Region No. 7 for verification.[18]

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[10] Exhibits "P-8", "P-8-A" and "P-8-B", Docket, Vol. II, pp. 455-470; Exhibit "R-8", Docket, Vol. III, pp. 1503-1508.
[11] Exhibits "P-9" to "P-12", Docket, Vol. II, pp. 471-474; Exhibits "R-8-A" to "R-8-D", Docket, Vol. III, pp. 1509-1512.
[12] Exhibit "R-8", Docket, Vol. III, pp. 1503-1508; Exhibit "R-9", Docket, p. 1513.
[13] Exhibit "P-13", Docket, Vol. II, p. 475; Exhibit "R-12", Docket, Vol. III, p. 1516.
[14] Exhibit "P-14", Docket, Vol. II, p. 476; Exhibit "R-13", Docket, Vol. III, p. 1518.
[15] Exhibit "P-15", Docket, Vol. II, pp. 477-479; Exhibit "R-14", Docket, Vol. III, pp. 1519-1521.
[16] Exhibit "P-17", Docket, Vol. II, pp. 481-482; Exhibit "R-15", Docket, Vol. III, pp. 1522-1523.
[17] Exhibit "P-16", Docket, Vol. II, p. 480.
[18] Exhibit "P-18", Docket, Vol. II, p. 483.

In another Letter dated June 14, 2019, Ms. Tulio denied petitioner's offer of compromise and demanded the payment of the assessed deficiency taxes within five (5) days from receipt of said Letter.[19] Said Letter was received by petitioner on June 28, 2019.[20]

Thereafter, an undated Warrant of Distraint and/or Levy was issued.[21]

On July 29, 2019, petitioner filed the present Petition for Review with Motion to Suspend Collection of Taxes[22] praying for the cancellation and setting aside of the aforementioned assessment, and for the suspension of the collection of the disputed tax liability.

Summonses were served upon the Office of the Solicitor General on August 13, 2022 and upon respondent on August 22, 2019.[23]

On August 29, 2019, petitioner's Motion to Suspend Collection of Taxes was set for hearing. Petitioner's witness, retired Brigadier General Emiliano D. Templo testified on direct examination. The Court ordered the submission of the certified true copies of petitioner's audited financial statements (AFS) for calendar year ending December 31, 2018, within one (1) day, or until August 30, 2019; deferred the completion of the cross-examination of Brigadier General Templo pending submission of the AFS; and, set the continuation of hearing of petitioner's Motion to Suspend Collection of Taxes on September 4, 2019.[24]

Petitioner submitted certified true copies of its 2017 AFS on August 30, 2019.[25]

At the September 4, 2019 hearing, respondent manifested that she will no longer continue with the cross-examination of retired Brigadier General Templo considering that petitioner submitted the 2017 AFS instead of the 2018 AFS. Thus, the Court granted petitioner five (5) days, or until September 9, 2019, to file its Formal Offer of Evidence (FOE). The Court likewise granted a similar period for

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[19] Exhibit "P20", Docket, Vol, II, p. 486; Exhibits "R-16" and "R-16-a", Docket, Vol. III, pp. 1524-1525.
[20] Petition for Review, Docket, Vol. I, p. 13.
[21] Exhibit "P-21", Docket, Vol. II, p. 487.
[22] Docket, Vol. I, pp. 10-58.
[23] Docket, Vol. I, p. 59.
[24] Docket, Vol. I, pp. 65-68.
[25] Docket, Vol. I, pp. 69-112.

respondent to file her comment or opposition thereto. From receipt of the resolution on petitioner's FOE, the Court granted the parties five (5) days to file their respective memoranda.[26]

On September 9, 2019, petitioner filed its FOE (Re: Petitioner's Motion for Suspension of Collection of Taxes and/or the Issuance of Temporary Restraining Order/Preliminary Injunction).[27] On the same date, respondent belatedly filed a Motion for Extension of Time to File Answer,[28] which the Court granted in the interest of justice in its Resolution dated September 23, 2019, giving respondent until October 6, 2019 to file an Answer.[29]

Respondent filed her Answer on October 7, 2019, the last day (October 6, 2019) being a Sunday.[30]

In the Resolution dated October 24, 2019, the Court admitted petitioner's Exhibits "P-1" – Injunction, "P-2" – Injunction, and "P-3" – Injunction, and reiterated its order for the parties to file their respective memoranda within five (5) days from notice.[31]

Petitioner belatedly filed a Motion for Extension of Time (Re: Memorandum in Connection with the Motion to Suspend Collection of Taxes, TRO/Preliminary Injunction) on November 25, 2019,[32] which the Court nonetheless granted in its Order dated November 28, 2019,[33] giving petitioner until December 2, 2019 to file the same.

Petitioner filed via registered mail its Memorandum on December 2, 2019,[34] advance copies of which were submitted on December 5, 2019.[35]

Respondent failed to file her memorandum per Records Verification dated December 19, 2019.[36] Thus, petitioner's Motion to

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[26] Docket, Vol. I, pp. 120-123.
[27] Docket, Vol. I, pp. 124-141.
[28] Docket, Vol. I, pp. 142-143.
[29] Docket, Vol. I, pp. 147-148.
[30] Docket, Vol. I, pp. 150-154.
[31] Docket, Vol. I, pp. 157-158.
[32] Docket, Vol. I, pp. 159-162.
[33] Docket, Vol. I, pp. 163-164.
[34] Docket, Vol. I, pp. 179-191.
[35] Docket, Vol. I, pp. 165-178.
[36] Docket, Vol. I, p. 210.

Suspend Collection of Taxes was submitted for resolution on January 14, 2020.[37]

In the Resolution dated February 3, 2020, the Court denied petitioner's Motion to Suspend Collection of Taxes since petitioner failed to show that the collection of tax would cause irreparable injury to petitioner and/or the Government as required under Section 11 of RA No. 1125, as amended.[38]

The parties agreed not to have their case mediated by the Philippine Mediation Center Unit – CTA per the No Agreement to Mediate dated September 7, 2020,[39] which the Court noted in its Resolution dated September 21, 2020.[40]

On November 18, 2020, respondent filed a Manifestation, with attached copy of its Pre-Trial Brief, informing the Court that she had filed her Pre-Trial Brief via registered mail on November 16, 2020,[41] which the Court received on December 4, 2022.[42] On even date, petitioner filed via email its Pre-Trial Brief,[43] the physical copies of which were submitted by petitioner the next day.[44]

The Pre-Trial Conference was held on November 19, 2020.[45]

On December 9, 2020, the parties filed their Joint Stipulation of Facts and Issues.[46]

Respondent filed a Compliance on January 19, 2021 elevating the BIR Records of this case.[47]

The Pre-Trial Order was issued on May 19, 2021.[48]

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[37] Docket, Vol. I, p. 213.
[38] Docket, Vol. I, pp. 245-250.
[39] Docket, Vol. I, p. 255.
[40] Docket, Vol. I, p. 261.
[41] Docket, Vol. I, pp. 268-282.
[42] Docket, Vol. II, pp. 881-893.
[43] Docket, Vol. I, pp. 295-304.
[44] Docket, Vol. II, pp. 379-387
[45] Docket, Vol. I, pp. 307-313.
[46] Docket, Vol. II, pp. 923-941.
[47] Docket, Vol. II, pp. 945-946.
[48] Docket, Vol. III, pp. 979-1000.

Thereafter, trial ensued. Petitioner presented both documentary and testimonial evidence. It presented the sole testimony of retired Brigadier General Templo, who testified that he was the duly authorized representative of petitioner; it was only in March or April 2019 when he found out about the assessment upon receipt of the Final Notice Before Seizure by their staff; he sent letters to the BIR requesting for a review of the computation of deficiency taxes; the cost of services for the salaries of petitioner's security guards amounts to roughly 90% of the security service fees received by petitioner under its contracts with clients; there exists a breakdown of costs as found in said contracts; petitioner employed around 200 security guards in 2015; and that the salaries of the security guards are sourced from the security service fees billed from petitioner's clients.[49]

On May 24, 2021, petitioner filed a Motion for Extension (Re: FOE),[50] which the Court deemed as granted in its Resolution dated June 22, 2021.[51]

Petitioner filed its FOE on May 28, 2021,[52] while respondent filed her Comment/Opposition thereto on June 14, 2021.[53]

In the Resolution dated October 20, 2021, the Court resolved to admit all of petitioner's exhibits except Exhibits "P-1", "P-1-A", "P-1-B", "P-4", "P-4-A", "P-4-B", "P-13", "P-15", "P-15-A", "P-15-B", "P-16", "P-16-A", "P-18", "P-18-A", "P-19", "P-19-A", "P-19-B", "P-21", "P-24", "P-24-A", "P-24-B" and "P-24-C" for failure of the witness to identify them; Exhibits "P-5" and "P-5-A" for failure to present the originals for comparison and for failure of the witness to identify them; and Exhibit "P-36" for failure to present the original for comparison.[54]

Respondent presented both documentary and testimonial evidence as well. She presented the testimonies of: (1) RO Patricia Camille M. Caleon, who testified that she prepared the Preliminary Collection Letter, Final Notice Before Seizure, and various Letters sent to and received by petitioner's employees;[55] and (2) RO Mary Grace Belen T. Villaluz, who testified that she reviewed the report of RO Pengson in relation to the latter's examination of the books of petitioner; no protest to the FLD was received by her office; and she

[49] Exhibit "P-42", Docket, Vol. III, pp. 388-398.
[50] Docket, Vol. III, pp. 1001-1004.
[51] Docket, Vol. III, pp. 1453-1454.
[52] Docket, Vol. III, pp. 1005-1023.
[53] Docket, Vol. III, pp. 1447-1450.
[54] Docket, Vol. III, pp. 1457-1459.
[55] Docket, Vol. I, pp. 359-367.

endorsed the case to the Collection Division for enforcement of summary remedies.[56]

Respondent filed via registered mail her FOE on May 10, 2022.[57] On May 27, 2022, petitioner filed its Comment thereon.[58]

In the Resolution dated June 23, 2022, the Court admitted all of respondent's exhibits except Exhibits "R-1", "R-2", "R-2-A", "R-2-B", "R-2-C", "R-2-D", "R-3", "R-4" and "R-5" for failure of respondent's witnesses to identify them; and, gave the parties a non-extendible period of thirty (30) days to file their respective memoranda.[59]

Respondent filed her Memorandum on August 1, 2022,[60] while petitioner filed its Memorandum on August 8, 2022.[61] Thereafter, the case was submitted for decision on August 25, 2022.[62]

THE ISSUE

The sole issue for the Court's resolution is: whether or not petitioner is liable to pay deficiency taxes in the total amount of ₱14,956,218.84 for TY 2015, broken down as follows:[63]

TAX TYPE	AMOUNT (₱)
Income Tax	10,374,311.05
Value-Added Tax	4,517,976.89
Expanded Withholding Tax	26,930.90
Compromise Penalty	37,000.00

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner contends that the assessment has no factual and legal basis. It argues that most of the security service fees received from its

[56] Docket, Vol. II, pp. 899-905.
[57] Docket, Vol. III, pp. 1477-1484.
[58] Docket, Vol. III, pp. 1527-1530.
[59] Docket, Vol. III, pp. 1532-1533.
[60] Docket, Vol. III, pp. 1534-1547.
[61] Docket, Vol. III, pp. 1548-1570.
[62] Minute Resolution dated August 25, 2022.
[63] Pre-Trial Order, Docket, Vol. III, pp. 991-992.

clients form part of the security guard's salaries, which are not considered as income of petitioner. Considering that the security guards are minimum wage earners, there is no reason to subject such salaries to withholding tax, and thus respondent erred in disallowing said expenses due to failure to withhold. Petitioner maintains that the assessed deficiency VAT should only pertain to the agency fees which constitutes petitioner's taxable gross receipts, and not to the entire security service fees received from clients. Finally, petitioner argues that with the Court's denial of admission of crucial documents, *i.e.*, LOA, Revenue Officer's Audit Report, Waiver of Prescription, NIC, and Memorandum Report dated April 2, 2018, there is no evidence to support the validity of the subject assessment.[64]

Respondent's counter-arguments

Respondent insists that the assessment against petitioner has become final, executory and demandable for petitioner's failure to file a protest within the prescribed period. She contends that petitioner's witness, retired Brigadier General Templo, admitted that Herdel Dela Cruz, who received the PAN and FLD, was authorized to receive the same in behalf of petitioner. It was only on April 12, 2019, or way beyond the thirty (30)-day period to file protest, that petitioner submitted its Letter requesting for reconsideration or reinvestigation of the assessment. Finally, respondent maintains that the assessment has factual and legal basis. Under Revenue Memorandum Circular (RMC) No. 39-2007, petitioner should have segregated the amounts it received pertaining to agency fees and to the salaries of the security guards. The failure of petitioner to comply with said RMC resulted in the entire amount of security service fees to be subjected to appropriate taxes.[65]

THE COURT'S RULING

After a judicious review of the facts as borne by the records, and applying the pertinent law on the matter, the Court rules that it has no jurisdiction over this case.

Section 7(a)(1) of RA No. 1125, as amended, provides:

"Sec. 7. *Jurisdiction*. - The CTA shall exercise:

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[64] Petitioner's Memorandum, Docket, Vol. III, pp. 1557-1569.
[65] Respondent's Memorandum, Docket, Vol. III, pp. 1536-1546.

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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

For there to be a "decision" of the CIR, the assessment must first be disputed, which is done by filing a protest within the prescribed period. This Court's jurisdiction is over the CIR's decision on the protest against an assessment, and not the assessment itself.[66] As elucidated by the Supreme Court in *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*:[67]

> "**The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer**. This is made by filing a request for reconsideration or reinvestigation with the Bureau of Internal Revenue, within 30 days from receipt of the assessment, stating the reasons therefor and submitting such proof as may be necessary. **The protest must be ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals**. If the protest is denied or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the decision or from the lapse of the 180-day period. Failure to comply with the 30-day period would deprive the Court of Tax Appeals of jurisdiction to hear and try the case.
>
> On the other hand, **if the taxpayer fails to file a valid protest against the assessment within 30 days from date of receipt thereof, the assessment becomes final, executory, and demandable**." (*Boldfacing supplied*)

Failure to file a protest within the prescribed period not only precludes petitioner from contesting the validity or correctness of the assessment, but also deprives this Court of jurisdiction to decide on the same. As held by the Supreme Court in *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*:[68]

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[66] *Commissioner of Internal Revenue vs. Court of Tax Appeals Third Division and Citysuper, Incorporated,* G.R. No. 239464, May 10, 2021.
[67] G.R. No. 225809, March 17, 2021.
[68] G.R. No. 168498, June 16, 2006.

> "As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.
>
> In *Ker & Company, Ltd. v. Court of Tax Appeals*, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless **the requirement that it must be brought within 30 days is jurisdictional**. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.
>
> In fine, **the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment**." (*Boldfacing supplied*)

In *Commissioner of Internal Revenue vs. Court of Tax Appeals Third Division and Citysuper, Incorporated*,[69] the Supreme Court held that the taxpayer's failure to validly contest the assessment strips this Court of jurisdiction to decide on the appeal, *viz.*:

> ""**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 appeal is premature and the Court of Tax Appeals has no jurisdiction**:
>
>> Since in the instant case the taxpayer appealed the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, **the jurisdiction of the Tax Court is to review by appeal decisions of Internal Revenue on disputed assessments**. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.
>
> Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue. Respondent's April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. **There was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the Court of Tax Appeals had no jurisdiction over the Petition for Review** assailing the July 13, 2015 letter." (*Boldfacing supplied*)

[69] G.R. No. 239464, May 10, 2021.

on

Indeed, observance of the prescribed period to file a protest is jurisdictional on the part of the Court. Notwithstanding any alleged infirmities in the subject assessment, the Court cannot hastily proceed in the determination of its validity or correctness without first inquiring whether it has the power and authority to hear and decide this case.

Section 228 of the NIRC of 1997, as amended, provides for the procedure for protesting an assessment, to wit:

> "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 pre-assessment notice shall not be required in the following cases:
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> x x x x x x x x x
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation 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." (*Boldfacing supplied*)

Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides:

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

> x x x x x x x x x
>
> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> x x x x x x x x x
>
> **If 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**. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. x x x" (*Boldfacing supplied*)

Evidently, the taxpayer's failure to file a protest within thirty (30) days from receipt of the FLD results in the assessment becoming final, executory and demandable.

Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, likewise provides that substituted service of assessment notices may be made on the taxpayer's clerk or a person having charge of the taxpayer's place of business, *viz.*:

> "3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances**:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

x x x x x x x x x"
(*Boldfacing supplied*)

Here, petitioner's witness, retired Brigadier General Templo, testified that he came to know of the subject assessment only upon receipt of the Final Notice Before Seizure, to wit:

"12. Q: Mr. Witness, when did you find out that respondent was conducting an assessment for your 2015 tax record?

A: Sir, I only, found out about this matter on or about the end of March 2019 or beginning of April of the same year, when our staff received a letter from the respondent dated March 18, 2019 entitled 'Final Notice Before Seizure.'"

Review of the FLD, together with the corresponding Assessment Notices (ANs)[70] shows, however, that said documents were served upon and received by a certain Herdel Dela Cruz on December 17, 2018.

Retired Brigadier General Templo testified, in his Judicial Affidavit, that Herdel Dela Cruz is petitioner' records custodian, to wit:

"33. Q: Mr. Witness, who's [sic] signature is on the 2015 Payroll Summary?

A: Sir, this is the signature of **Mr. Herdel Dela Cruz, petitioner's records custodian**. He keeps records like this in his file. I am familiar with his signature because **he regularly signs official corporate documents in the normal course of business** in front of me."[71] (*Boldfacing supplied*)

He likewise admitted on cross-examination that Herdel Dela Cruz is authorized to receive the FLD, *viz.*:

"ATTY. BAGOTSAY:

[70] Exhibits "R-8", "R-8-A" to "R-8-D", Docket, Vol. III, pp. 1503-1512.
[71] Exhibit "P-42", Docket, Vol. II, p. 395.

Q. Last question, *po*, Mr. Witness, on your answer to Question No. 33, found on Page No. 8, may I just confirm, Mr. Witness, that Mr. Herdel Dela Cruz, [is] the petitioner's records custodian? May I just confirm with you, Mr. Witness?

MR. TEMPLO

A. Mr. Herdel Dela Cruz is not our records custodian, but he is a Clerk in the office, your Honors.

x x x x x x x x x

MR. TEMPLO:

A. Your Honors, may I clarify this matter? Considering that we only have a few employees in our office, considering that we are just a beginning or a beginner in the security business, **all the employees there are authorized to receive communications coming from the outside**. And, if we talked of the designation of **Mr. Dela Cruz, his designation is as Security Guard, Coordinator, at the same time he's also a Supply Officer. And, he is also authorized to receive communications from the outside**."[72] (*Boldfacing supplied*)

Since the FLD was duly served upon petitioner's authorized representative on December 17, 2018, it had thirty (30) days therefrom, or until **January 16, 2019**, within which to file a protest either via a written request for reconsideration or reinvestigation, which petitioner failed to do. It was only on **April 12, 2019** that petitioner submitted a letter requesting for reconsideration or reinvestigation of the assessment.[73]

Considering that petitioner failed to timely protest the FLD, the same has become final, executory and demandable in accordance with Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended. Accordingly, the Court is bereft of jurisdiction to determine the validity or correctness of the assessment.

It is a rule that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding

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[72] Transcript of Stenographic Notes, February 23, 2021, pp. 20-21.
[73] Exhibit "P-15", Docket, Vol. II, pp. 477-479; Exhibit "R-14", Docket, Vol. III, pp. 1519-1521.

legal effects.[74] Considering that the subject assessment per FLD No. 040-2018-B075-15 has attained finality for failure of petitioner to protest the same within the prescribed period, the Court has no recourse but to dismiss this case.

Since the Court has no jurisdiction over this case, there is no need to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[74] *Bernadette S. Bilag, et al. vs. Estela Ay-ay, et al.*, G.R. No. 189950, April 24, 2017.

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