REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORTIZ MEMORIAL CHAPEL, INC. Petitioner,	**CTA CASE NO. 9805** Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 10 2022 9:0 a.m.

x - x

DECISION

CASTAÑEDA, JR., J.:

The *Petition for Review* filed on April 11, 2018 prays for the declaration of invalidity of the assessments issued by respondent, which found petitioner liable for alleged deficiency income tax, value-added tax (VAT), documentary stamp tax (DST) and registration fee, in the amount of ₱6,939,944.15, inclusive of surcharges, interests and penalties.[1]

THE PARTIES

Petitioner Ortiz Memorial Chapel, Inc. is a corporation organized and existing under the laws of the Philippines, with office address at Balzain Highway, Balzain, Tuguegarao City, Cagayan, as represented by its President Ronald Ortiz.[2]

---

[1] Summary of the Case, Pre-Trial Order dated June 14, 2019, Docket – Vol. I, p. 374.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 365.

Respondent Commissioner of Internal Revenue (CIR) is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising from the implementation of the National Internal Revenue Code (NIRC) and other laws administered by the Bureau of Internal Revenue (BIR). His office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On July 24, 2013, the BIR issued *Letter of Authority* (LOA) SN: eLA201000008746/LOA-013-2013-00000066,[4] authorizing Revenue Officer Hanilaine Pe and Group Supervisor Elda Bernadette Calimag of Revenue District No. 013 – Tuguegarao, Cagayan, to examine its books of accounts and other accounting records for all internal revenue taxes, including DST, and other taxes for the period from January 1, 2011 to December 31, 2011, pursuant to Sections 6(A) and 10(C) of NIRC of 1997, as amended.

Thereafter, on August 19, 2013, the BIR issued a *Second Notice*,[5] requesting the submission of pertinent records/documents for the correct determination of its internal revenue tax liabilities for taxable year 2011.

On September 4, 2013, petitioner then sent a *Letter of Extension* to the BIR, requesting for an extension of fifteen (15) days to provide the necessary documents.[6]

Petitioner again sent a *Letter* to the BIR on October 1, 2013, informing the latter that the pertinent documents were in the possession of a certain Dominador Furigay, the former Secretary of the petitioner, and requested another ten (10) days to submit documents.[7]

[3] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. I, pp. 365 to 366.
[4] Exhibit "R-1", BIR Records, p. 80.
[5] Exhibit "R-1", BIR Records, p. 81.
[6] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366; Exhibit "P-7", Docket – Vol. I, p. 63.
[7] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366.

On October 11, 2013, the BIR issued the *Final Notice* requesting petitioner to submit its Book of Accounts necessary in the conduct of audit.[8]

The BIR further issued the *Letter* dated September 11, 2014, informing petitioner of the result of the investigation covering its 2011 internal revenue tax liabilities in the amount of ₱2,919,432.79, representing deficiencies on income tax, VAT, withholding tax and registration fee, inclusive of legal increments.[9]

On October 29, 2014, a *Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code* was executed by petitioner's representative, and was accepted by the BIR.[10]

The BIR issued the *Letter* dated January 28, 2015, informing petitioner of the result of the investigation. As a result, the proposed assessment of tax liability amounting to ₱3,604,875.19 which represents the VAT deficiency, inclusive of legal increments.[11]

On July 30, 2015, the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* was issued to petitioner, informing the result of the investigation. The BIR disclosed that there has been found due from petitioner an aggregate amount of ₱6,784,128.85 as deficiency income, VAT, DST and registration fee, inclusive of surcharge and interest.[12]

On October 30, 2015, the *Formal Letter of Demand* (FLD), with *Details of Discrepancies*, was issued to petitioner informing the latter with the result of the investigation. The BIR disclosed that there has been found due from the corporation an aggregate amount of ₱6,939,944.15 as deficiency income tax, VAT, DST, and registration fee, inclusive of legal increments.[13]

---

[8] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366; Exhibit "P-9", Docket – Vol. I, p. 65; Exhibit "R-3", BIR Records, p. 86.
[9] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366; Exhibit "P-12", Docket – Vol. I, pp. 67 to 69.
[10] Exhibits "P-13" and "R-4", Docket – Vol, I, p. 70.
[11] Par. 7, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366.
[12] Par. 8, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366; Exhibit "P-15, Docket – Vol. I, pp. 75 to 78; Exhibit "R-5", BIR Records, pp. 120 to 123.
[13] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. I, p. 366; Exhibit "P-16", Docket – Vol. I, pp. 79 to 83; Exhibit "R-6", BIR Records, pp. 131 to 135.

Subsequently, on February 4, 2016, the *Preliminary Collection Letter* was issued to petitioner.[14]

On February 23, 2016, the BIR issued the *Final Notice Before Seizure*,[15] giving petitioner the last opportunity to make the necessary settlement of all its tax liabilities; otherwise, the BIR shall serve and execute the *Warrant of Distraint and/or Levy* to enforce the collection of its account.

The *Warrant of Distraint and/or Levy* was then issued against petitioner on April 15, 2016, which the latter received on April 19, 2016.[16]

Petitioner then sent its *Letter-Protest* to the BIR on February 7, 2017.[17]

On March 2, 2018, petitioner sent another *Letter-Protest* dated February 23, 2018.[18]

On March 12, 2018,[19] petitioner received the *Letter* dated March 3, 2018 issued by the BIR, through Regional Director Thelma S. Milabao, stating that petitioner failed to file a protest within the reglementary period provided by law, and thus, the tax assessment against it has already become final, executory and demandable.[20]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on April 11, 2018.[21] The case was initially raffled to this Court's First Division. *gr*

---

[14] Par. 10, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367.
[15] Exhibits "P-17" and "R-7", Docket – Vol. I, p. 89.
[16] Par. 11, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367; Exhibits "P-18" and "R-8", Docket – Vol. I, p. 90.
[17] Par. 12, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367; Exhibit "P-19", Docket – Vol. I, p. 91.
[18] Par. 13, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367; Exhibits "P-20" and "R-9", Docket – Vol. I, pp. 55 to 57.
[19] Docket – Vol. I, p. 58.
[20] Par. 14, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367; Exhibits "P-21" and "R-10", Docket – Vol. I, pp. 59 to 60.
[21] Docket – Vol I, pp. 12 to 50 [filed with the *Formal Entry of Appearance (As Counsel for the Petitioner)*].

Respondent filed his *Answer* on August 2, 2018,[22] interposing the following special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the instant petition, and the assessment against petitioner has already become final, executory and demandable; (2) the requirement of due process was properly complied with in issuing the formal letter of demand; (3) the imposition of fifty percent (50%) surcharge has bases; (4) assuming that the three-year period to assess is applicable, the assessment has not yet prescribed since petitioner executed a valid waiver; (5) the assessment has bases both in fact and in law; (6) petitioner is liable for surcharge and interest; and (7) the assessment issued against petitioner is valid and lawful.

The Pre-Trial Conference was initially set on October 4, 2018.[23] *Petitioner's Pre-Trial Brief* was filed on September 24, 2018,[24] while *Respondent's Pre-Trial Brief* was submitted on December 5, 2018.[25]

This case was transferred to this Court's Second Division, pursuant to the Order dated September 26, 2018,[26] thereby cancelling the scheduled Pre-Trial Conference. The said Conference was reset to December 6, 2018,[27] and further reset to January 31, 2019.[28]

At the hearing held on January 31, 2019, the Court ordered the parties to immediately proceed and to personally appear or through their authorized representative at the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), on February 19, 2019, with or without the presence of their counsel/s, for mediation proceedings.[29] However, there was an unsuccessful mediation per the undated *Mediation Report* issued by the Appellate Mediator, Retired Justice Oswaldo D. Agcaoili.[30] *gr*

[22] Docket – Vol. I, pp. 151 to 166.
[23] *Notice of Pre-Trial Conference* dated August 9, 2018, Docket – Vol I, pp. 151 to 166.
[24] Docket – Vol. I, pp. 173 to 196.
[25] Docket – Vol. I, pp. 328 to 333.
[26] Docket – Vol. I, p. 325.
[27] *Notice of Pre-Trial Conference* dated October 26, 2018, Docket – Vol I, pp. 326 to 327.
[28] *Notice of Resetting* dated December 5, 2018, Docket – Vol I, p. 334.
[29] Minutes of the hearing held on, and Resolution dated, January 31, 2019, Docket – Vol. I, pp. 338 and 340, respectively.
[30] Docket – Vol. I, p. 343.

The Pre-Trial Conference was then set anew to be held on April 11, 2019.[31] However, the same was reset to, and held on, May 23, 2019.[32]

Respondent transmitted the *BIR Records* on May 28, 2019.[33]

On June 6, 2019, the parties presented their *Joint Stipulation of Facts and Issues* (JSFI).[34] In the Pre-Trial Order dated June 14, 2019,[35] the Court approved and adopted the said JSFI, and deemed the termination of the pre-trial.

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Ronald Ortiz,[36] President and member of the Board of Directors of petitioner; and (2) Mr. Nelson Ortiz,[37] Corporate Secretary and member of the Board of Directors of petitioner.

Petitioner posted its *Formal Offer of Exhibits* on November 4, 2019.[38] Respondent then filed his *Manifestation/Comment (on Petitioner's Formal Offer of Evidence)* on November 25, 2019.[39]

In the Resolution dated December 11, 2019,[40] the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3A", "P-3B", "P-3C", "P3D", "P-4", "P-4A", "P-4B", "P-5", "P-9", "P-13", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-24", "P-27", "P-36", "P-36A", "P-37" and "P-37A"; but *denied* the following:

---

[31] Resolution dated March 22, 2019, Docket – Vol. I, p. 350.

[32] Minutes of the hearing held on, and Order dated, April 11, 2019, Docket – Vol. I, pp. 351 to 352; Minutes of the hearing held on, and Order dated, May 23, 2019, Docket – Vol. I, pp. 358 to 359.

[33] *Compliance* dated May 27, 2019, Docket – Vol. I, pp. 360 to 362; *cf. Manifestation with Compliance* filed on October 13, 2020, Docket – Vol. II, pp. 529 to 532.

[34] Docket – Vol. I, pp. 365 to 372.

[35] Docket – Vol. I, pp. 374 to 379.

[36] Exhibit "P-36", Docket – Vol. I, pp. 198 to 214; Minutes of the hearing held on, and Order dated, July 15, 2019, Docket – Vol. I, pp. 385 to 386.

[37] Exhibit "P-37", Docket – Vol. I, pp. 215 to 221; Minutes of the hearing held on, and Order dated, August 28, 2019, Docket – Vol. I, pp. 394 to 395.

[38] Docket – Vol. I, pp. 425 to 435.

[39] Docket – Vol. II, pp. 483 to 484.

[40] Docket - Vol. II, pp. 487 to 488.

1. Exhibits "P-3", "P-7", "P-8", "P-10", "P-11", "P-12", "P-14" and "P-22", for failure to present their originals for comparison;

2. Exhibits "P-6", "P-34", "P-34A", "P-34B", "P-34C" and "P-35", for failure to have the exhibits identified and to present their originals for comparison; and

3. Exhibits "P-23", "P-25", "P-26", "P-28", "P-29", "P-30", "P-31", "P-32" and "P-33", for failure to have the exhibits identified.

Petitioner then posted its *Motion for Reconsideration (To the Resolution of the Honorable Court dated 11 December 2019)* on January 29, 2020.[41] Respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on February 19, 2020.[42]

In the Resolution dated June 8, 2020,[43] the Court partially granted petitioner's *Motion for Reconsideration*, and admitted Exhibits "P-7" and "P-12"; but still *denied* the following:

1. Exhibits "P-3", "P-8", "P-10", "P-11" and "P-14", for failure to present their originals for comparison;

2. Exhibits "P-6", "P-34", "P-34A", "P-34B" and "P-34C", for failure to have the exhibits identified and to present their originals for comparison; and

3. Exhibits "P-23", "P-25", "P-28", "P-29", "P-30", "P-31", "P-32" and "P-33", for failure to have the exhibits identified.

During the hearing held on October 5, 2020, respondent's counsel manifested that his intended witness, Ms. Hanilaine Pe is in Nueva Vizcaya, and cannot attend the hearing due to travel restrictions as a result of the COVID-19 pandemic. In this regard, respondent dispensed with the presentation of Ms. Hanilaine Pe. In lieu thereof, both parties' counsels agreed to stipulate on the documents to be identified by Ms. Hanilaine Pe. Petitioner's counsel, on the other hand, moved for the reconsideration of its denied exhibits "P-28" to "P-32", inclusive. Considering the objection

---

[41] Docket – Vol. II, pp. 500 to 505.
[42] Docket – Vol. II, pp. 509 to 511.
[43] Docket – Vol. II, pp. 514 to 517.

interposed by the respondent, manifesting that while the documents were indicated to be certified true copies, there was no signature appended to attest to the fact that said documents were certified true copies, the oral motion for reconsideration was denied, for failure of petitioner to identify the same.[44]

Respondent filed his *Formal Offer of Evidence* on October 15, 2020.[45] Petitioner posted its *Comment (To Respondent's Formal Offer of Evidence)* on October 22, 2020.[46] In the Resolution dated December 21, 2020,[47] the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9" and "R-10"; but *denied* Exhibit "R-11", for failure to present the original for comparison.

Respondent's *Memorandum* was filed on February 9, 2021;[48] while petitioner's *Memorandum* was posted on March 25, 2021.[49]

On June 7, 2021, this case was considered submitted for decision.[50]

THE ISSUES RAISED BY THE PARTIES

For failure to stipulate as to the issue, the parties submitted separate issues for the Court's resolution, to wit:

"Issue for the Petitioner:

1. Whether or not the respondent CIR complied with the Due Process Requirement;
2. Whether or not [petitioner] OMCI committed FRAUD in filing its Return;
3. Whether or not the assessment has become final and executory and demandable;
4. Whether or not [petitioner] OMCI is liable for Six Million Nine Hundred Thirty-Nine Thousand Nine Hundred Forty-Four Pesos and 15/100 (P6,939,944.15) as Deficiency Income,

---

[44] Minutes of the hearing held on, and Order dated, October 5, 2020, Docket – Vol. II, pp. 524 to 526.
[45] Docket – Vol. II, pp. 533 to 538.
[46] Docket – Vol. II, pp. 542 to 543.
[47] Docket – Vol. II, pp. 547 to 548.
[48] Docket – Vol. II, pp. 554 to 573.
[49] Docket – Vol. II, pp. 585 to 604.
[50] Resolution dated June 7, 2021, Docket – Vol. II, p. 607.

VAT, Documentary Stamp Tax and Registration Fee for taxable year 2011;

5. Whether or not all the [petitioner] Corporation's properties were from Spouses Ortiz as inheritance.

Issue for the Respondent:

1. Whether the Honorable Court has jurisdiction to rule on the case.

In the alternative that the Honorable Court will assume jurisdiction:

2. Whether or not the assessment has become final and executory and demandable;
3. Whether or not OMCI is liable for Six Million Nine Hundred Thirty-Nine Thousand Nine Forty-Four Pesos and 15/100 (P6,939,944.15) as Deficiency Income, VAT, Documentary Stamp Tax and Registration Fee for taxable year 2011."[51]

Petitioner's arguments:

Petitioner argues that it is not liable for ₱6,939,944.15 as deficiency income, VAT, DST and registration fee; that the PAN and FAN are void, thus, the assessment against it has never become final and executory and demandable; that the waiver of the statute of limitations was not validly executed; and that petitioner did not commit fraud in filing its return.

Respondent's counter-arguments:

Respondent claims that the Court has no jurisdiction over the instant petition, and the assessment against petitioner has already become final, executory and demandable; that the requirement of due process was properly complied with in issuing the FLD; that the imposition of 50% surcharge has bases; that assuming that the 3-year period to assess is applicable, the assessment has not yet prescribed since petitioner executed a valid waiver; that the assessment has bases both in fact and in law; that petitioner is liable for surcharge and interest; and that the assessment issued against petitioner is valid and lawful.

[51] Stipulation of Issue, JSFI, Docket – Vol. I, pp. 367 to 368.

THE COURT'S RULING

The present *Petition for Review* must be dismissed.

Jurisprudence has consistently held that jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action. Perforce, it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[52]

Relative to the issue of jurisdiction, Section 228 of the NIRC of 1997 reads:

> "Section 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment <u>in such *form and manner* as may be prescribed by</u>**

[52] *Bilag, et al. vs. Ay-ay, et al.,* G.R. No. 189950, April 24, 2017.

> **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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphases, italics and underscoring added)*

Based on the foregoing provision, a tax assessment issued by the BIR may be protested administratively, within thirty (30) days from receipt thereof, by filing either a request for reconsideration or reinvestigation, **in such form and manner as may be prescribed by implementing rules and regulations.**

Implementing the above-quoted Section 228, particularly the *form and manner* of filing of the requests for reconsideration and for reinvestigation, Section 3 of RR No. 12-99[53], as amended by RR No. 18-2013[54], provides, in part, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[55] 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: *gz*

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

[54] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

[55] That is, the *"Formal Letter of Demand and Final Assessment Notice"*.

(i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered on which his protest is based, otherwise, **this protest shall be considered *void and without force and effect*.**

xxx xxx xxx

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

xxx xxx xxx." *(Emphases and underscoring added)*

On the basis of the foregoing provisions, the form and manner of protests to be filed by the concerned taxpayer has been clearly and distinctively defined. Particularly, a distinction has been made between the two (2) types of protest, *i.e.*, a *request for reconsideration* and a *request for reinvestigation*. Thus, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside.[56]

Clearly, in a *request for reconsideration*, the plea for re-evaluation of the assessment is *on the basis of existing records without need of additional evidence*, while in a *request for reinvestigation*, such plea for re-evaluation is *on the basis of newly discovered or additional evidence that the taxpayer intends to present in the reinvestigation*. Furthermore, it must be pointed out that the distinction between a *request for reconsideration* and a *request for reinvestigation* is significant for the purpose of identifying which request triggers the application or operation of the sixty (60)-day period, within which to submit all relevant supporting documents, as determined by the concerned taxpayer. Apparently, the said sixty (60)-day period applies only to *requests for reinvestigation*.

In any case, the protest must state the following: (1) the nature thereof (whether *reconsideration* or *reinvestigation*, and in case of the latter, it must specify the newly discovered or additional evidence the taxpayer intends to present); (2) date of the assessment notice; and (3) the applicable law, rules and regulations, or jurisprudence on which his protest is based; otherwise, the protest shall be considered void, and without force and effect.

In this case, petitioner's *Letter-Protest* dated February 7, 2017[57] did not comply with Section 228 of the NIRC of 1997, in relation to the above-quoted provisions Section 3 of RR No. 12-99, as amended by RR No. 18-2013. Notably, the said *Letter-Protest* does not state the nature of the protest (whether for reconsideration or reinvestigation), and the date of the assessment notice.

In the same vein, petitioner's *Letter-Protest* dated February 23, 2018[58] did not comply with the same provisions. It is noteworthy that this *Letter-Protest* dated February 23, 2018 fails to state the nature of the protest (whether for reconsideration or reinvestigation), the date of the assessment notice, and even the applicable law, rules and regulations, or jurisprudence on which the protest is based. *gr*

---

[56] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

[57] Exhibit "P-19", Docket – Vol. I, p. 91; Refer also to Par. 12, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367.

[58] Exhibits "P-20" and "R-9", Docket – Vol. I, pp. 55 to 57; Refer also to Par. 13, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367.

Correspondingly, petitioner's *Letter-Protest* dated February 7, 2017 and *Letter-Protest* dated February 23, 2018 are void.

In *Commissioner of Internal Revenue vs. Court of Tax Appeals-Third Division, et al.*,[59] the Supreme Court ruled as follows:

> "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.
>
> xxx xxx xxx
>
> Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period, <u>but also 'in such form and manner as may be prescribed by implementing rules and regulations.'</u>** Respondent's April 29, 2015 letter did not comply with three requirements of Revenue Regulations No. 18-2013.
>
> The Court of Tax Appeals is a court of special jurisdiction. Section 7 of Republic Act No. 9282 states what matters involving Commissioner of Internal Revenue are within its exclusive appellate jurisdiction:
>
> SECTION 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under National Internal Revenue Code or other laws administered by the Bureau of Internal

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

> Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]

In respondent's Petition for Review, it contended that its Petition was timely filed because it was assailing the July 13, 2015 letter, which it claimed was petitioner's 'final decision on the matter of petitioner's protest against the deficiency tax assessments for the taxable year 2011.'

This argument is inaccurate.

In *Commissioner of Internal Revenue v. Villa*,[60] this Court held that the Court of Tax Appeals' jurisdiction was over the Commissioner of Internal Revenue's decision on the protest against an assessment, and not the assessment itself. Thus, the period to invoke judicial review must be counted from receipt of the Commissioner's decision on the disputed assessment.

Here, however, respondent's protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code. Respondent erred in claiming that the July 13, 2015 letter was petitioner's 'final decision' on its protest, there being no valid protest to speak of. Notably, the July 13, 2015 letter did not discuss the merits of any communication sent by respondent after its April 29, 2015 letter, but merely stated that no valid protest was filed.

The circumstances here are analogous to those in *Ker & Company, Ltd. v. Court of Tax Appeals*,[61] where this Court found that the material date was the issuance from the Commissioner which contained the original demand, and not its reiteration:

> It is argued that the decision or ruling of the Collector which should be appealed to the Tax Court is the former's letter dated January 5, 1954 (Exh. 13), and that the 30-period provided in section 11, commenced to run only on February 1, 1956, the date on which the petitioner-appellant received the Collector's letter dated January 23, 1956. This contention is without merit. The Collector's letter dated January 23, 1956, partly reads as follows:
>
> > 'With reference to your letter dated August 1, 1955, concerning the deficiency income tax liabilities of Ker & Co., Ltd., Manila, for 1947, 1948, 1949 and 1950, I regret to have to inform you

[60] 103 Phil. 3 (1968) [Per J. Bengzon, *En Banc*].
[61] G.R. No L-12396, January 31, 1962 [Per *J.* Paredes, *En Banc*].

> that, notwithstanding your allegations therein, this Office still finds no justification to alter, reverse or modify the assessments issued against your client for said years.
>
> As elucidated in our letter to you of January 5, 1954, the alleged home-leave liabilities which your client claimed as deduction were disallowed as such because the same were not actually incurred but were mere reserve accounts for contingent purpose. No evidence were presented by you showing that the said expenses were actually incurred in the years of their deductions or in the subsequent years....'.

It is thus noted that the allegation in the above quoted letter is simply a reiteration of the previous demand as contained in the Collector's letter of January 5, 1954 (Exh. 13). Again, the Collector sent to the petitioner-appellant the demand letter dated July 28, 1954 (Exh. 18), which merely reiterated the demand dated January 5, 1954. Although petitioner denied having received said letter, yet it is significant to mention that when it was presented had not objected to it. This is the first time they attack its receipt. It is finally to be observed that the ruling of the Collector contained in his letter of January 5, 1954, remained unaltered and unmodified. As the Court *a quo* has correctly commented –

> 'Under the facts stated above, we find that the decision of respondent which is appealable to this Court under Sections 7 and 11 of Republic Act No. 1125 is the one contained in his letter of January 5, 1954, the same having remained unaltered and unmodified up to the date the appeal was filed (See Angel Saraos v. CIR, CTA Case No. 229, March 5, 1956; Merced Drug Store v. CIR, CTA Case No. 180, May 21, 1956....
>
> Moreover, since a letter of demand or assessment was sent by the Collector of Internal Revenue to a taxpayer contains a determination of the tax liability of the latter, such letter or assessment must be considered as the 'decision' appealable to this Court. The

> Supreme Court appears to recognize the same view when it held that the assessment made by the Collector of Internal Revenue is the substantive and dispositive part of his decision' (Ventanilla v. BTA, G.R. No. L-7384, prom. Dec. 19, 1955). Under circumstances comparable with our law, the United States Supreme Court in the case of Gull v. U.S. (1935, 295 U.S. 247; 79 L. ed., 1941) sustained the same theory that the assessment is the action of an administrative agency equivalent to a decision and is therefore given the force of a judgment'.

> This being the case, it logically follows that the decision which was appealed was that of January 5, 1954 and that the 30-day period should have started from the receipt of the said letter on January 25, 1954 (Exh. 14). No appeal having been taken from this decision, the same became final, conclusive and executory (Roxas v. Sayoc, G.R. No. L-8502, Nov. 29, 1956.

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. (Citation omitted)

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.**" *(Emphases added)* gr

Based on the foregoing jurisprudential pronouncements, it is clear that Section 228 of the NIRC of 1997 requires that administrative protests against assessments conform with RR No. 12-99, as amended by RR No. 18-2013. Failing which, there is no administrative protest to speak of, and no decision on a disputed assessment to assail. As such, when a petition for review is filed before this Court, without validly contesting the assessment, the appeal is premature, and the Court has no jurisdiction.

As already intimated, petitioner's *Letter-Protest* dated February 7, 2017 and *Letter-Protest* dated February 23, 2018 failed to conform with the aforequoted provisions of RR No. 12-99, as amended by RR No. 18-2013. Such being the case, the same are void, and there is no valid protest to speak of in this case. It follows then that neither is there a decision on a disputed assessment to be assailed. Thus, the *Letter* dated March 3, 2018 issued by the BIR, through Regional Director Thelma S. Milabao,[62] cannot be considered as respondent's final decision on a disputed assessment.

Nonetheless, it must be pointed out that contrary to petitioner's stance, the present case cannot be considered as falling under *"other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue"*, so as to vest this Court with exclusive appellate jurisdiction thereover. This is simply because there is no showing that the present case falls under the category of *"other matters"*. As above shown, the present case clearly and exclusively falls under the aforequoted Section 228 of the NIRC of 1997, and to no other provision of the NIRC of 1997 or other laws administered by the BIR.

Correspondingly, the present *Petition for Review* is premature and this Court has no jurisdiction to entertain the same.

It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[63]

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

---

[62] Exhibits "P-21" and "R-10", Docket – Vol. I, pp. 59 to 60; Refer also to Par. 14, Stipulation of Facts, JSFI, Docket – Vol. I, p. 367.

[63] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

With Separate Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With Separate Concurring Opinion
LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ORTIZ MEMORIAL CHAPEL INC., represented by Ronald Ortiz,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9805

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 1 0 2022 9:11 a.m.

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our distinguished Chairperson and colleague, Associate Justice Juanito C. Castañeda, Jr., denying the Petition for Review on the ground of lack of jurisdiction.

The *ponencia* noted that petitioner's Letter-Protest dated 07 February 2017[1] and 23 February 2018[2] are void as they failed to conform with the requirements of Revenue Regulations (**RR**) No. 12-99[3], as amended by RR 18-2013.[4] Specifically, they failed to state the nature of the protest (whether reconsideration or reinvestigation), the date of the assessment notice, and the applicable law, rules and regulations, and jurisprudence on which the protests are based.

---

1 Exhibit "P-19", Division Docket, Volume I, p. 91.

2 Exhibit "P-20", id., pp. 55-57.

3 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.

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

I wish to add, however, another reason as to why this Court no longer has any jurisdiction to entertain the present petition.

Petitioner's witness and President, Ronald Ortiz (**Ortiz**), admitted that it received the Formal Letter of Demand (**FLD**) dated 30 October 2015[5] *without* stating the specific date of the said receipt.[6] Nevertheless, the said witness further admitted that the FLD was received after its receipt of the Preliminary Assessment Notice (**PAN**) dated 30 July 2015 and before it received the Final Notice Before Seizure (**FNBS**) dated 23 February 2016 and Warrant of Distraint and/or Levy (**WDL**) dated 15 April 2016.[7]

On the other hand, respondent alleged that petitioner received the FLD on 14 November 2015[8]. However, he presented no evidence to substantiate the said allegation and merely referred to the supposed registry receipt number.

Thus, in any case, petitioner's filing of protest (dated 07 February 2017 and 23 February 2018) was belatedly made, whether the Court will reckon the thirty-day period[9] to file the same on 14 November 2015, at the earliest (pursuant to respondent's allegation), or when the FNBS was issued on 23 February 2016, at the latest (*per* Ortiz's testimony).

Considering that petitioner's filing of protests was belatedly made, the assessments are already considered final, executory and demandable. Resultantly, the Court no longer has jurisdiction to entertain the instant petition.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

5 Exhibit "P-16", Division Docket, Volume I, pp. 79-81.

6 Question and Answer No. 75, Judicial Affidavit of Ronald Ortiz, id., p. 210.

7 Question & Answer Nos. 70-81, id., pp. 209-210.

8 Respondent's Memorandum, id., Volume II, p. 557.

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORTIZ MEMORIAL CHAPEL, INC., represented by Ronald Ortiz,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **9805**

Members:
CASTAÑEDA, JR., *Chairperson*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 10 2022
9:N a.m.

x- x

SEPARATE CONCURRING OPINION

CUI-DAVID, J.:

I concur with the *ponencia* of our esteemed colleague and Chairperson, Associate Justice Juanito C. Castañeda, Jr. that the instant Petition for Review must be dismissed for lack of jurisdiction.

Nonetheless, I write separately to emphasize and add a number of important points.

Failure to comply with the 30-day period to protest deprives the Court of Tax Appeals of jurisdiction to hear and try this case

I submit that the subject deficiency tax assessments have become final, executory, and demandable for petitioner's failure to file a valid administrative protest against the Formal

Letter of Demand and Final Assessment Notice (FLD/FAN) within thirty (30) days from receipt thereof.

Section 228 of the National Internal Revenue Code (NIRC), as amended, provides for the procedure and manner in which deficiency tax assessments should be issued and protested.[1]

On the other hand, Section 3 of Revenue Regulation (RR) No. 12-99,[2] implementing Section 228 above, provides for the due process requirement in the issuance of a deficiency tax assessment. In particular, Section 3.1.4 states:

> "3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN <u>within thirty</u>

[1] **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 <u>pre-assessment notice</u> shall not be required in the following cases:

xxx xxx xxx

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. <u>If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings</u>.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation <u>within thirty (30) days</u> from receipt of the assessment in such <u>form and manner</u> as may be prescribed by implementing rules and regulations. xxx " (Emphasis supplied)

[2] Dated September 6, 1999, as amended by **<u>RR No. 18-2013</u>** dated November 28, 2013.

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

3.1 Mode of procedures in the issuance of a deficiency tax assessment: ...

3.1.1 **Preliminary Assessment Notice (PAN).** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. . . . If the taxpayer fails to respond within <u>fifteen (15) days from date of receipt of the PAN</u>, <u>he shall be considered in default</u>, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. ...

3.1.3 **Formal Letter of Demand and Final Assessment Notice (FLD/FAN).** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void . . .

3.1.4 **Disputed Assessment.** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN **<u>within thirty (30) days from date of receipt</u>** thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: . . .

If the taxpayer fails to file a valid protest against the FLD/FAN within <u>thirty (30) days</u> from date of receipt thereof, **<u>the assessment shall become final, executory and demandable</u>**. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become **<u>final, executory and demandable.</u>** ... (Emphasis supplied)

> (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: . . .
>
> 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. ..." (Emphasis supplied)

In *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc. (V.Y. Domingo),*[3] the Supreme Court held that:

> "Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Section 228 of the Tax Code requires taxpayers to exhaust administrative remedies by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Exhaustion of administrative remedies is required prior to resort to the CTA precisely to give the Commissioner the opportunity to "re-examine its findings and conclusions" and to decide the issues raised within her competence.
>
> ...
>
> 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 Associate Justice Roman G. Del Rosario in his Dissenting Opinion, "Clearly, 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." (Emphasis supplied)

---

[3] G.R. No. 221780, March 25, 2019

In the recent case of *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc. (South Entertainment)*,[4] the Supreme Court reiterated that the assessment must be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue (CIR) to warrant a decision that may be taken to the CTA, viz.:

> "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. xxx 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. (Emphasis supplied)

It is clear from the aforecited provisions and jurisprudential pronouncements that the taxpayer is required to respond within fifteen (15) days from receipt of the Preliminary Assessment Notice (PAN), otherwise, he or she will be considered in default and the FLD/FAN will be issued. After receipt of the FLD/FAN, the taxpayer is given thirty (30) days to file a protest. The protest must be ruled upon by the CIR to warrant a decision which may be taken to the Court of Tax Appeals (CTA). Failure to comply with the 30-day period will render the assessment final, executory and demandable and deprive the CTA of jurisdiction to hear and try the case.

In the instant case, records reveal that a PAN dated July 30, 2015, with Details of Discrepancies, was issued by the respondent Commissioner of Internal Revenue (CIR).[5] An FLD dated October 30, 2015, with Details of Discrepancies, was likewise issued by the respondent. [6] The petitioner did not respond to the PAN within fifteen (15) days from receipt thereof. Neither did it file a protest against the FLD within thirty (30) days from its receipt.

[4] G.R. No. 225809, March 17, 2021
[5] Exhibit "P-15", Preliminary Assessment Notice, Docket, pp. 75 to 78
[6] Exhibit "P-16", Formal Letter of Demand and Final Assessment Notice, *id.*, pp. 79 to 83.

It is worth noting that during the trial, petitioner's witness, Mr. Ronald Ortiz (Mr. Ortiz),[7] expressly admitted that the petitioner received the PAN, the FLD, the first two assessments issued, and other BIR notices but did not at all dispute the findings and assessments of the respondent.[8] Mr. Ortiz further testified that after the receipt of the FLD by the petitioner, the respondent proceeded with the issuance of the Final Notice Before Seizure[9] and the Warrant of Distraint and Levy (WDL) dated April 15, 2016. Petitioner allegedly received a letter dated February 1, 2017 from the Legal Division which it protested in a letter dated February 7, 2017 (*first letter-protest*). Petitioner then sent another letter dated February 23, 2018 (*second letter-protest*) to the Bureau. Thereafter, the petitioner received a letter dated March 3, 2018 from Thelma Milabao, RD of RR 03, Tuguegarao City, denying its letter of protest.[10]

---

[7] Petitioner's President and a member of its Board of Directors

[8] Exhibit "P-36", Judicial Affidavit of Ronald Ortiz, Docket, pp. 198-212

Q70: After receiving the Letter, what happened next, if there is any?
A70: The Corporation received **PRELIMINARY ASSESSMENT NOTICE (PAN) dated July 30, 2015** informing the OMCI that has a Tax Liability in an aggregate amount of SIX MILLION SEVEN HUNDRED EIGHTY-FOUR THOUSAND ONE HUNDRED TWENTY-EIGHT PESOS AND 85/100 (PHP 6,784,128.85) as deficiency Income, VAT, Documentary Stamp Tax and Registration Fee, inclusive of surcharge and interest.

Q72: You handed to me "Preliminary Assessment Notice" dated July 30, 2015. I will mark this document as EXHIBIT "O" and attach the same to your judicial affidavit, do you affirm and confirm my action?
A72: Yes Attorney.

Q73: Have you paid the said amount?
A73: No Attorney because the Assessment was confusing. The First two Assessments issued and the subsequent Assessment are not consistent with their contents.

Q74: **Have you filed a Protest?**
A74: **No Attorney.**

Q75: What happened next, if there is any?
A75: The Corporation received **FORMAL LETTER OF DEMAND (FLD) dated October 30, 2015** informing that the Corporation has Tax Liability in the aggregate amount of SIX MILLION NINE HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED FORTY-FOUR PESOS AND 15/100 (PHP 6,939,944.15) as deficiency Income, VAT, Documentary Stamp Tax and Registration Fee, inclusive of legal increments.

Q78: Have you made payments of the said amount?
A78: No Attorney.

Q79: What happened next, if there is any?
A79: The Bureau issued **Final Notice before Seizure, Warrant of Distraint and/or Levy dated April 15, 2016**.

Q82: Was the Bureau able to levy or seized any of your properties?
A82: No Attorney. (Emphasis supplied)

[9] Dated February 23, 2016

[10] Exhibit "P-36", Judicial Affidavit of Ronald Ortiz, Docket, pp. 198-212

Q83: What happened next if there is any?
A83: A letter dated February 01,2017 **from the Legal Division** of the was received by the OMCI requiring it to pay …

Q84: Have you made payment?
A84: No Attorney, **instead we protested the said Letter**.

Q85: Do you have the copy of the letter?
A85: Yes Attorney

It may not be amiss to point out that petitioner's *first letter-protest* was filed more than fifteen (15) months from its receipt of the FLD dated October 30, 2015 and nine (9) months after its receipt of the WDL dated April 15, 2016; whereas the *second letter-protest* was filed more than twenty seven (27) months from its receipt of the FLD and twenty two (22) months after its receipt of the WDL.

It is clear that the subject letters were filed well beyond the prescribed period. Moreover, aside from being filed out of time, both letters failed to conform to the form and manner required under the existing rules,[11] as aptly observed and discussed by the *ponencia*.

As held by the Supreme Court in *South Entertainment* and *V.Y. Domingo*, an assessment must first be disputed by the taxpayer and the protest must be ruled upon by the CIR to warrant a decision that may be taken to this Court.

There being no valid protest, and no protest ruling or decision to speak of in this case, the dismissal of the same by this Court for lack of jurisdiction is therefore proper.

(Witness handed documents)

Q86: You handed to me "**Lettter" dated February 07, 2017**, I will mark this document as EXHIBIT "S" and attach the same to your judicial affidavit, do you affirm and confirm my action?
A86: Yes Attorney.

Q87: What happened next if there is any?
A87: The OMCI again sent a letter to the Bureau dated February 23, 2018.
xxx

Q90: Did the Bureau responds to your letter?
A90: Yes Attorney. We received a letter denying our Letter of Protest.

Q91: Do you have the copy of the Letter?
A91: Yes Attorney.

Q92: You handed to me "Letter" dated March 03, 2018, I will mark this document as **EXHIBIT "U"** and attach the same to your judicial affidavit, do you affirm and confirm my action?
Q92: Yes Attorney. (Emphasis supplied)

[11] Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013 -
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.
xxx
The taxpayer shall state in his protest (i) the nature of the protest whether reconsideration or reinvestigation, xxx (ii) the date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

<u>In case of false returns, the prescriptive period may be extended to ten (10) years</u>

Another important issue raised by the parties is the prescriptive period to assess deficiency taxes.

Petitioner claims that the Waiver of the Defense of Prescription (Waiver)[12] was not validly executed; that it is defective[13] and did not validly extend the original three-year prescriptive period to assess; that the assessment against it has never become final, executory and demandable; and that prescription has set in, in its favor.[14] Petitioner further claims that it did not commit fraud in filing the return; and that in the PAN and FLD, it has been meted a 50% surcharge as penalty for fraud.[15]

On the other hand, the respondent maintains that the Waiver is valid and effectively extended the three-year period to assess, as it fulfills all legal requirements.[16] The respondent likewise contends that the assessment against the petitioner was due to its undeclared income; that since there has been an under declaration of income, the returns filed are considered false; and that the imposition of a fifty percent (50%) surcharge has bases.[17]

Section 203 of the NIRC of 1997, as amended, provides for a period of three (3) years for the BIR to assess internal revenue taxes, counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Consequently, any assessment issued after the expiration of such period is no longer valid and effective.[18] However, this prescriptive period may be extended

---

[12] Executed on October 29, 2014 by the petitioner through its President, Ronald Ortiz,

[13] Par. 37 of the Memorandum of the Petitioner, Docket, pp. 585 to 604

37. Applying RMO No. 20-90, the waiver in question herc was defective and did not validly extend the original three-year prescriptive period.

36.1 Petitioner OMCI was not furnished a copy of the BIR-accepted waiver. ...

36.2 THE WAIVER WAS NOT NOTARIZED

36.3 Petitioner was not furnished of the BIR-accepted copy; thus, it cannot determine if BIR really accepted the waiver. ...

[14] Pages 28 to 34 of the Petition; Paragraphs 33 to 41, Memorandum of the Petitioner, *id.*, pp. 585 to 604

[15] Pages 19 to 22 of the Petition; Paragraphs 42 to 49, Memorandum of the Petitioner, *id.*

[16] Pages 10 to11, Answer, Docket, pp.160 to 161; Pages 14 to 15, Memorandum of the Respondent, *id.*, pp.554 to 573

[17] Pages 7 to 10, Answer, *id.*, pp. 157 to 160; Pages 10 to 14, Memorandum of the Respondent, *id.*, pp.554 to 573

[18] Section 203 of the NIRC, as amended, provides:

SEC. 203. Period of Limitation Upon Assessment and Collection. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, to ten (10) years, in case of a false or fraudulent return with intent to evade tax, or of failure to file a return; or within the period agreed upon between the CIR and the taxpayer by executing a valid Waiver.[19]

In the present case, the assessments issued by the respondent to the petitioner, specifically the PAN, the FLD and the corresponding Details of Discrepancies, revealed the following findings:

Deficiency Income Tax
Assessment No. R3-IT-015-042

Taxable Income Return			P	431,333.02
Add: Undeclared Income				6,833,750.06
Disallowed Expenses				423,659.73
Taxable Income per audit			P	7,688,742.81
Income Tax Due Thereon			P	2,425,398.00
Less: Income Tax Paid				129,399.91
Deficiency Income Tax			P	2,295,998.09
Add: 50% Surcharge	P	1,147,999.05		
20% Interest p.a. (4/16/12 – 10/30/15)		1,625,056.43		2,773,055.48
Amount Due/Collectible			P	5,069,053.57

Deficiency Value-Added Tax (VAT)
Assessment No. R3-V5-015-032

Undeclared Income, Annex A	P	6,833,750.06
VAT Due thereon (12%)	P	820,050.00
Add: 50% Surcharge		410,025.00
20% Interest (1/26/12 – 10/30/15)		616,859.83
Amount Due/Collectible	P	1,846,934.83

The Details of Discrepancies disclosed that the undeclared income in the amount of Php 6,833,750.06 consists of unreported professional fees and security services expense, and the undervaluation of reported properties in the respective amounts of Php 72,000, Php 6,000, and Php 6,755,750.06. It further disclosed the details of unsupported

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.

[19] Section 222 (a) (b) of the NIRC, as amended, provides:
SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. "

expenses in the aggregate amount of Php 423,659.73. The Office of the Regional Director (RD), Revenue Region 03 (RR 03), Tuguegarao City, imposed a 50% surcharge and 20% interest on the petitioner for its deficiency income tax and deficiency value-added tax; and a 25% surcharge and 20% interest for its deficiency documentary stamp tax and deficiency registration fee, pursuant to Sections 248 (A) and (B) and 249 (A) of the NIRC, as amended. Under Section 248,[20] a 50% penalty shall be imposed in case of willful neglect to file the return, or in case a false or fraudulent return is willfully made.

It is undisputed that petitioner did not file an administrative protest against the above assessments within thirty (30) days from receipt of the FLD dated October 30, 2015. The non-filing of the said protest led to the finality of the assessments, including the findings of undeclared income, unreported expenses, undervalued properties, and unsupported expenses, as well as the imposition of a 50% surcharge.

In *Commissioner of Internal Revenue vs. Asalus Corporation,*[21] the Supreme Court held:

> "Generally, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or where the return is filed beyond the period, from the day the return was actually filed. Section 222 of the NIRC, however, provides for exceptions to the general rule. It states that in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the assessment may be made within ten (10) years from the discovery of the falsity, fraud or omission.

---

[20] Section 248 (A) and (B) of the NIRC, as amended, provides:
SECTION 248. Civil Penalties.~

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25% of the amount due, in the following cases: xxx

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial under declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided. further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial under declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[21] G.R. No. 221590, February 22, 2017

In the oft-cited *Aznar v. CTA*, the Court compared a false return to a fraudulent return in relation to the applicable prescriptive periods for assessments, to wit:

> "xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time **within ten years** after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely "falsity", "fraud" and "omission." That there is a difference between "**false return**" and "**fraudulent return**" cannot be denied. While the first merely implies deviation from the truth, **whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due.
>
> xxx
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that **the period of ten years within which to assess** petitioner's tax liability had not expired at the time said assessment was made.

> Thus, a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the **ten (10) year prescriptive period** under Section 222 of the NIRC." (Emphasis supplied)

Here, the substantial under declaration of income in the amount of Php 6,833,750.06 arising from: (1) the unreported professional fees and security services expense amounting to Php 72,000.00 and Php 6,000.00, respectively; and (2) the undervaluation of reported properties amounting to Php

6,755,750.06, as well as the unsupported expenses in the aggregate amount of Php 423,659.73, constitute "*deviation from the truth or fact, whether intentional or not,*" resulting to its filing of false income tax and VAT returns, that gave respondent the advantage of utilizing the period under Section 222 of the NIRC, as amended, to assess the correct amount of tax "*at any time within ten (10) years after the discovery of the **falsity** xxx.*"

It bears noting that petitioner questioned, for the first time, respondent's treatment of the alleged undervaluation of properties and unsupported expenses as part of the undeclared income in its *second letter-protest.* However, it did not refute the validity and correctness of unreported professional fees and security services expense. As to the unsupported expenses, the petitioner merely argued that its records of expenses (light, water, taxes, licenses, fuel and other daily expenses) were in the custody of its former manager who has been hiding since 2012.[22] Thus, assuming the amount of Php 6,755,750.06 representing undervalued properties is excluded from the computation of undeclared income, the fact that petitioner has unreported professional fees and security services and unsupported expenses means that it filed false returns *whether intentional or not.*

While there may be truth to petitioner's claim that it did not commit fraud in order to evade payment of taxes, this does not preclude a finding of false income tax and VAT returns. This is because while a fraudulent return implies a malicious and deliberate intent to evade the payment of the tax, a false return merely implies a deviation from the truth, whether intentional or not.[23]

It is settled that tax assessments are *prima facie* correct. At the same time, tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment.[24] Thus, in denying deficiency tax liability, it is incumbent upon a taxpayer to show clearly that the assessment is void or erroneous, or that the tax authorities had been remiss in issuing the same.[25]

---

[22] Par. 23, Memorandum of the Petitioner, Docket, pp. 585 to 604
[23] CIR vs. Asalus Corporation, supra
[24] AFP General Insurance Corp. vs. Commissioner of Internal Revenue, supra, citing Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., 494 Phil 306 (2005)
[25] AFP General Insurance Corp. vs. Commissioner of Internal Revenue, supra, citing CIR vs. Hon. Gonzales, 647 Phil. 462 (2010)

A mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC.[26]

Considering the filing of false returns in the present case, I submit that the ten (10) year prescriptive period applies. Clearly, the period to assess petitioner's internal revenue taxes for taxable year 2011 had not yet prescribed when the respondent issued the assessments, particularly the FLD/FAN dated October 30, 2015 against the petitioner. Further, even if the Waiver executed by the petitioner is declared defective and void for failure to comply with RMO No. 20-90, the subject assessments are still valid for having been issued within the ten (10) year prescriptive period.

In light of the foregoing considerations, I concur on the result and vote to **DISMISS** the petition.

LANEE S. CUI-DAVID
Associate Justice

[26] CIR vs. Asalus Corporation, supra