Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

GLOBAL METAL TECH CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8329
For: Assessment

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

SEP 23 2014 ; 3:47 p.m.

x- -x

D E C I S I O N

MINDARO-GRULLA, J.:

This resolves the Petition For Review filed by Global Metal Tech Corporation, as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:

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

x x x x x x

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

x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Petitioner seeks to reverse and set aside the Decision assessing petitioner of deficiency final withholding tax (FWT) in the amount of Six Hundred Sixty Thousand Eight Hundred Ninety-Nine Pesos and 15/100 (₱660,899.15) for fiscal year ended September 30, 2006.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Blk. 4, Lot 4, Filinvest Technology Park, Calamba City, Laguna.[3]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to perform the duties of her office, including, *inter alia*, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner entered into a service agreement[4] with Japan Overseas Development Corporation (JODC) on July 27, 2006. JODC is a non-registered corporation in the Philippines,[5] and described as a non-profit organization established to support the business activities of Japanese-

x x x x x x

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

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Par. 9, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 146.
[4] Exhibits "F" and "F-1", Docket, pp. 261 to 268.
[5] Exhibit "H", Docket, p. 277.

affiliated companies, develop human resources, and contribute to the industrial development of developing countries through the JODC Expert Service Abroad (JESA) Program.[6]

Respondent issued Letter of Authority No. LOA 2007 00011390[7] on October 15, 2007 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering October 1, 2005 to September 30, 2006. Respondent likewise issued the following: (1) Letter[8] dated October 16, 2007, requesting the submission of the aforesaid books of accounts and related records; (2) Second Request for Presentation of Records[9] dated November 5, 2007; and (3) Final Request for Presentation of Records[10] dated December 4, 2007.

Petitioner was eventually found to be liable for deficiency tax; thus, respondent sent to petitioner a Notice of Informal Conference dated July 16, 2008.[11]

On September 12, 2008, Revenue Officer Nimfa Z. Nadal recommended to the Regional Director of Revenue District Office (RDO) No. 56-Calamba City the issuance of Assessment Notice against petitioner.[12]

On February 5, 2009, petitioner received the Preliminary Assessment Notice (PAN) with Details of Discrepancies dated January 22, 2009,[13] assessing it for deficiency taxes and penalties as follows:[14]

Assessment Notice for Deficiency Taxes/Penalties	Tax Due	Interest and Compromise Penalty	Total Amount Due

[6] Exhibit "O", Docket, p. 289.
[7] Exhibit "1", BIR Records, p. 795.
[8] Exhibit "10", BIR Records, p. 794.
[9] Exhibit "11", BIR Records, p. 796.
[10] Exhibit "12", BIR Records, p. 797.
[11] Exhibit "2", BIR Records, p. 1115.
[12] Exhibit "3", BIR Records, pp. 1134 to 1137.
[13] Exhibit "A" and "A-1", Docket, p. 249; Exhibit "4", BIR Records, pp. 1151 to 1152.
[14] Par. 6, JSFI, Docket, p. 146.

Expanded Withholding Tax	P 14,113.29	P 9,468.59	P 23,581.87
Final Withholding Tax	P442,216.56	P218,682.59	660,899.59
Total Amount Payable			P684,481.46

Petitioner did not dispute the assessed deficiency expanded withholding tax amounting to P23,581.87;[15] hence, it paid the said amount[16] with the Batino Branch of Rizal Commercial Banking Corporation,[17] an authorized agent bank of RDO No. 56 on February 18, 2009.[18] Petitioner was likewise assessed of deficiency final withholding tax for its alleged failure to withhold taxes on payment of professional fees made to JODC pursuant to the provisions of Revenue Regulations (RR) No. 2-98, as amended.[19] The deficiency FWT assessment in the amount of P660,899.15 pertains to the payments made by petitioner to JODC during fiscal year ended September 30, 2006.[20]

On February 20, 2009, petitioner protested the PAN by filing a letter dated February 19, 2009 with respondent, disputing the deficiency FWT assessment in the amount of P660,899.15.[21]

Respondent issued the Formal Letter of Demand[22] with attached Audit Results/Assessment Notices,[23] all dated February 17, 2009, which petitioner received on February 25, 2009,[24] assessing the latter as follows:

II. FINAL WITHHOLDING TAX

FOH-Professional Fees Japanese overseas Devt. Corp. Less: Payments	P1,263,475.88	35%	P 442,216.56 -
Deficiency tax Add: Interest (10/11/06-		P202,682.59	P 442,216.56

[15] Par. 10, JSFI, Docket, p. 147.
[16] Exhibit "C", Docket, p. 255.
[17] Exhibit "D", Docket, p. 256.
[18] Par. 11, JSFI, Docket, p. 147.
[19] Par. 7, JSFI, Docket, p. 146.
[20] Par. 24, JSFI, Docket, p. 149.
[21] Par. 12, JSFI, Docket, p. 147; Exhibit "E" and "E-3", Docket, pp. 257 to 260.
[22] Exhibit "6", BIR Records, pp. 1153 to 1155.
[23] Exhibit "B", Docket, pp. 250 to 251; Exhibit "6-A", BIR Records, pp. 1156 to 1157.
[24] Par. 15, JSFI, Docket, p. 147; Exhibit "B-1", Docket, p. 250.

02/17/09)		
Compromise penalty	16,000.00	218,682.59
TOTAL AMOUNT PAYABLE		**P660,899.15**

Respondent through Regional Director Nestor S. Valeroso of Revenue Region No. 9 also issued letter[25] dated April 13, 2009, informing petitioner that the case would be forwarded to RDO No. 56-Calamba City for further evaluation, and requesting petitioner to submit all relevant documents supporting the protest within sixty (60) days. The letter was received by petitioner on May 6, 2009.[26]

On May 15, 2009, petitioner filed its protest letter dated May 12, 2009 against the Formal Letter of Demand.[27]

Respondent replied through a letter dated June 24, 2009, informing petitioner that the protest letter would be forwarded to RDO No. 56-Calamba City and requesting petitioner to submit all relevant documents for evaluation. Petitioner received it on July 2, 2009.[28]

Respondent denied petitioner's protest through a letter dated July 12, 2011, which was received by the latter on August 2, 2011.[29] Thus, petitioner filed the instant Petition for Review on September 1, 2011.

Respondent filed her Answer[30] on October 25, 2011, interposing the following special and affirmative defenses:

> "4. The assessment for fiscal year 2006 deficiency Final Withholding Tax (FWT) is valid and was issued in accordance with law.

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[25] Exhibit "K", Docket, p. 280; Exhibit "13", BIR Records, p. 1194.
[26] Par. 17, JSFI, Docket, p. 148; Exhibit "K-1", Docket, p. 280.
[27] Pars. 18 and 19, JSFI, Docket, p. 148; Exhibits "J" and "J-1", Docket, p. 278.
[28] Pars. 20 and 21, JSFI, Docket, p. 148; Exhibits "L" and "L-1", Docket, p. 281.
[29] Pars. 22 and 23, JSFI, Docket, pp. 148 to 149; Exhibits "M" and "M-1", Docket, p. 282.
[30] Docket, pp. 106 to 109.

5. Contrary to the claims of petitioner, the subject Assessment Notices are valid. The complete details as required by law were attached as Annex 'A' as Details of Discrepancy of the FAN and such is repleaded herein.

5. The statements contained in Annex 'A' are the factual verifications which resulted in the assessment. It also contains the legal basis for such assessments.

6. The Details of Discrepancy is adequate enough to inform petitioner of the legal and factual bases of the assessments. Petitioner was properly informed of the findings of the Revenue Officers. The belief of inadequate information on the legal basis and facts gives petitioner an option to file an administrative protest.

7. Contrary to petitioner's claim that they are exempt from VAT by citing BIR Ruling No. 02-09, it should be noted that the aforementioned ruling was issued to HRD Korea and not petitioner. Petitioner is not exempted from FWT as the BIR Ruling is only for the applicant who has submitted the proper documents for the BIR to fully thresh out the details whether the applicant is truly deserving of such exemption.

8. The statements comparing petitioner with HRD Korea is merely self-serving and should not be given any weight.

9. Finally, it is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

On November 22, 2011, petitioner filed its Pre-Trial Brief[31]; while respondent submitted through registered mail

[31] Docket, pp. 114 to 127.

her Pre-Trial Brief[32] on November 23, 2011 and received by this Court on November 29, 2011. Respondent also filed a Supplemental Pre-Trial Brief[33] on December 1, 2011.

On January 13, 2012, the pre-trial conference was held and both counsels of the parties entered into admissions, stipulations of facts, identification of issues, enumeration of the witnesses and documents to be presented during trial.[34] Consequently, the pre-trial was terminated on February 6, 2012[35] and a Pre-Trial Order[36] was issued.

The parties submitted their Joint Stipulation of Facts and Issues[37] on January 26, 2012.

During trial, both parties presented and formally offered their respective documentary and testimonial evidence.

On July 20, 2012, petitioner filed its Formal Offer of Evidence.[38]

Petitioner's documentary exhibits are as follows:

Exhibits:	Description:
A	Preliminary Assessment Notice (PAN) dated 22 January 2009 with stamp "RECEIVED" dated 05 February 2009.
A-1	Original stamp "RECEIVED" dated 05 February 2009.
B	Two (2) BIR Forms No. 0401 with the caption "Audit Result/Assessment Notice", both dated 17 February 2009 and signed by Jaime B. Santiago, Regional Director with attached Formal

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[32] Docket, pp. 130 to 133.
[33] Docket, pp. 136 to 139.
[34] Minutes of the Hearing dated January 13, 2012, Docket, p. 143.
[35] Resolution, Docket, p. 154.
[36] Docket, pp. 156 to 164.
[37] Docket, pp. 144 to 151.
[38] Docket, pp. 231 to 248.

	Letter of Demand dated 17 February 2009 and signed by Jaime B. Santiago, CESO V, Regional Director and "Detail of Discrepancies" signed by Maria Rona J. Uychutin, Revenue Officer II (collectively referred to as the Formal Assessment Notice or FAN) with stamp "RECEIVED" dated 25 February 2009.
B-1	Original stamp of "RECEIVED" 25 February 2009.
C	Bureau of Internal Revenue (BIR) Form No. 0605 indicating the payment of deficiency expanded withholding tax (EWT) amounting to Php23,581.87 with stamp of receipt dated 18 February 2009 of the Batino Branch of Rizal Commercial Bank Corporation (RCBC).
C-1	Signature above the name Cristina Dao of Exhibit "C".
D	RCBC indicating payment of deficiency tax of Php23,581.57 on 18 February 2009.
E	Letter dated 19 February 2009 with subject "2006 Preliminary Assessment Notice" and received by the BIR on 20 February 2009.
E-1	Signature above the name of Rachel P. Follosco of Exhibit "E".
E-3	BIR original stamp "RECEIVED" 20 February 2009.
F	Agreement on JODC Expert Service Abroad Program (JESA-I) dated 27 July 2006.
F-1	Signature above the name "Shinichi Kishida" of Exhibit "F".
H	Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) dated 12 September 2011.

J	Letter dated 12 May 2009 with subject "2006 Assessment" and received by the BIR 15 May 2009.
J-1	BIR original stamp "RECEIVED" 15 May 2009.
J-3	Signature above the name of Rachel P. Follosco of Exhibit "J".
K	Letter dated 13 April 2009 from Mr. Nestor S. Valeroso and addressed to Atty. Rachel P. Follosco at Suite 2500, 88 Corporate Center, 141 Valero St. corner Valero Street, Salcedo Village, Makati City with stamp of receipt dated 06 May 2009.
K-1	Signature below the stamp "Received" dated 06 May 2009 of Ms. Ma. Richelle Aritala of Exhibit "K".
L	Letter dated 24 June 2009 from Mr. Nestor S. Valeroso and addressed to Ms. Rachel P. Follosco at Suite 2500, 88 Corporate Center, 141 Valero St. corner Sedeno Street, Salcedo Village, Makati City with stamp of receipt dated 02 July 2009.
L-1	Signature below the stamp "Received" dated 02 July 2009 of Ms. Ma. Richelle Aritalla of Exhibit "L".
M	Letter dated 12 July 2011 from Mr. Carlos S. Salazar and addressed to Global Metal Tech Corporation at Filinvest Technology Park, Calamba City with stamp of receipt dated 02 August 2011.
M-1	Original stamp of "RECEIVED" dated 02 August 2011 of Exhibit "M".
N	Judicial Affidavit of Ms. Ma. Richello O. Aritalla executed on 24 February 2012.
N-1	Signature above the name of Ma. Richello O. Aritalla in page 5 of Exhibit "N".
O	Letter of Certification dated 16 March 2012 addressed to Cristina Dao from Iwao Oshima.

O-1	Signature above the name Iwao Oshima of Exhibit "O"
P	Check Voucher No. 00420 for the amount of Php216,562.50 representing Petitioner's share of expenses for December 2005 and January 2006.
P-1	Signature above the name Cristina Dao of Exhibit "P".
P-2	Signature below the printed words "Received the above amount" of Mr. Yosuke Takahashi of Exhibit "P".
Q	Check Voucher No. 0514 for the amount of Php213,592.50 representing Petitioner's share of expenses for February to March 2006.
Q-1	Signature above the name Cristina Dao of Exhibit "Q".
Q-2	Signature below the printed words "Received the above amount" of Mr. Yosuke Takahashi of Exhibit "Q".
R	Check Voucher No. 622 for the amount of Php169,537.62 representing Petitioner's share of expenses for April to May 2006.
R-1	Signature above the name Cristina Dao of Exhibit "R".
R-2	Signature below the printed words "Received the above amount" of Mr. Yosuke Takahashi of Exhibit "R".
S	Check Voucher No. 668 for the amount of Php172,776.00 representing Petitioner's share of expenses for June to July 2006.
S-1	Signature above the name Cristina Dao of Exhibit "S".
S-2	Signature below the printed words "Received the above amount" of Mr. Yosuke Takahashi of Exhibit "S".
T	Check Voucher No. 910 for the amount of Php195,105.94 representing Petitioner's share for August to September 2006.

T-1	Signature above the name Cristina Dao of Exhibit "T".
T-2	Signature below the printed words "Received the above amount" of Mr. Tomoaki Sugiura of Exhibit "T".
U	Check Voucher No. 266 for the amount of Php224,189.32 representing Petitioner's share of expenses for July to September 2005.
U-1	Signature above the name Cristina Dao of Exhibit "U".
U-2	Signature below the printed words "Received the above amount" of Mr. Yosuke Takahashi of Exhibit "U".
V	Check Voucher No. 174 for the amount of Php226,710.00 representing Petitioner's share of expenses for October to November 2005.
V-1	Signature above the name Cristina Dao of Exhibit "V".
V-2	Signature below the printed words "Received the above amount" of Mr. Yosuke Takahashi of Exhibit "V".
W	Request for Payment with "Receipt" dated 27 July 2006.
W-1	Signature above the name Iwao Oshima of Exhibit "W".
X	Request for Payment with "Receipt" dated 20 January 2006.
X-1	Signature above the name Iwao Oshima of Exhibit "X".
Y	Request for Payment with "Receipt" dated 17 March 2006.
Y-1	Signature above the name Iwao Oshima of Exhibit "Y".

Z	Request for Payment with "Receipt" dated 24 May 2006.
Z-1	Signature above the name Iwao Oshima of Exhibit "Z".
AA	Request for Payment with "Receipt" dated 22 June 2005.
AA-1	Signature above the name Iwao Oshima of Exhibit "AA".
BB	Request for Payment with "Receipt" dated 22 September 2005.
BB-1	Signature above the name Iwao Oshima of Exhibit "BB".
CC	RCBC Bank Deposit Slip dated 15 May 2006 with machine-validation indicating the amount of Php169,537.61 deposited to the account of Mr. Yosuke Takahashi.
DD	JODC Brochure.
MM	Judicial Affidavit of Ms. Cristina Dao executed on 20 April 2012.
MM-1	Signature above the name Cristina Dao in page 15 of Exhibit "MM".
NN	Judicial Affidavit of Ms. Cristina Dao executed on 18 June 2012.
NN-1	Signature above the name Cristina Dao in page 7 of Exhibit "NN".

Respondent filed its Formal Offer of Documentary Evidence[39] on May 20, 2013.

The documentary exhibits formally offered by respondent are as follows:

Exhibit Description

[39] Docket, pp. 464 to 478.

1	Letter of Authority No. 00011390 dated October 15, 2007, issued by Ms. Araceli L. Francisco
2	Notice of Informal Conference dated July 16, 2008
3	Memorandum dated September 12, 2008, recommending that the case be forwarded to Assessment Division for issuance of Assessment Notice.
4	Preliminary Assessment Notice dated January 22, 2009.
5	Memorandum dated February 4, 2011, finding that Japan Overseas Development Corporation (JODC) is not an international organization, but a non-government organization subject to final withholding tax.
6	Formal Letter of Demand with Details of Discrepancies dated February 17, 2009.
6-A	Assessment Notice.
7	Memorandum of Assignment dated March 14, 2011, for the continuation of Audit Investigation.
8	Memorandum dated April 13, 2009, instructing the Revenue Officer to inform the taxpayer on the conduct of the reinvestigation.
9	Memorandum Report dated September 21, 2011, recommending that the case be forwarded to Assessment Division for the issuance of Assessment Notice.
10	Letter dated October 16, 2007, requesting for the submission of book of accounts and related records for all internal revenue taxes covering the period October 1, 2005 to September 30, 2006.
11	Second Request for Presentation of Records dated November 5, 2007.

12	Final Request for Presentation of Records dated December 4, 2007.
13	Letter dated April 13, 2009, informing the petitioner that the case will be forwarded to the District Office, in order to give them time to submit documents in support of their protest.
14	Judicial Affidavit of Ms. Nimfa Z. Nadal
14-A	Signature of Ms. Nimfa Z. Nadal
15	Judicial Affidavit of Ms. Maria Rona J. Uychutin
15-A	Signature of Ms. Maria Rona J. Uychutin
16	Judicial Affidavit of Ms. Mayeth C. Rada
16-A	Signature of Ms. Mayeth C. Rada

Both parties were given a period of thirty (30) days to file their respective memoranda. After the Court considered petitioner's Memorandum[40] filed on January 10, 2014 and respondent's Memorandum[41] filed on December 19, 2013, the case was deemed submitted for decision on January 16, 2014.[42]

By agreement of the parties, the following are the issues[43] to be resolved by this Court:

"A.

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO TRY THE INSTANT CASE.

B.

WHETHER OR NOT THE RIGHT OF PETITIONER TO DUE PROCESS WAS VIOLATED BY RESPONDENT WHEN RESPONDENT ISSUED THE FORMAL

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[40] Docket, pp. 553 to 578.
[41] Docket, pp. 523 to 535.
[42] Resolution, Docket, p. 582.
[43] Docket, p. 149

ASSESSMENT NOTICE BEFORE THE LAPSE OF THE 15-DAY PERIOD FROM DATE OF RECEIPT OF PRELIMINARY ASSESSMENT NOTICE GRANTED BY LAW FOR PETITIONER TO RESPOND TO THE PRELIMINARY ASSESSMENT NOTICE.

C.

ASSUMING ARGUENDO THAT THE FORMAL ASSESSMENT NOTICE IS VALID, WHETHER OR NOT PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY FINAL WITHHOLDING TAX AND RELATED INTEREST AND COMPROMISE PENALTY THEREON, IN THE AGGREGATE AMOUNT OF PHP660,899.15."

Petitioner posits that its right to due process was violated by respondent when the latter issued the Formal Assessment Notice before the lapse of the 15-day period from the date of receipt of the Preliminary Assessment Notice granted by law for petitioner to respond to the same. Thus, the assessment is null and void.

On the other hand, respondent maintains that due process was observed in the issuance of notices. Respondent likewise argues that the Final Assessment Notice was validly issued despite its issuance within the period to comment on the PAN. An assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a tax liability that is definitely set and fixed. The purpose of assessment is to inform the taxpayer of its deficiency tax liability and to give opportunity to refute the same. The essence of due process is simply an opportunity to be heard, logically preconditioned on prior notice, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling being complained.

One of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law.[44] In the

[44] Section 1, Article III, 1987 Constitution.

case of *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation*[45], the CTA *En Banc* held:

> "xxx, suffice it to say that due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest.
>
> Note that a preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice. Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested to by SAMC; else, the same becomes final and executory."

The CTA *En Banc* likewise explained that a protest against the PAN, unlike the protest against the FAN, is not indispensable. A PAN may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the PAN final and unappealable. Therefore, the issuance of the FAN before the lapse of the 15-day period for the taxpayer to file its protest to the PAN, inflicts no prejudice on the taxpayer for as long as the latter is properly served a FAN and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law. Moreover, this Court observed that petitioner was afforded the procedural due process required by law when it was fully apprised of the legal and factual bases of the assessment issued against it and that petitioner was given the opportunity to substantially protest or dispute the assailed assessments via its protest letter.[46]

Considering the afore-cited cases and the PAN with attached Details of Discrepancies, petitioner was afforded

[45] CTA EB Nos. 631 and 632, December 22, 2011.
[46] *Oakwood Management Services (Philippines), Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 7989, August 8, 2013.

due process by apprising it of the legal and factual bases of the assessment.

The Court will now determine whether it has jurisdiction to try the instant Petition for Review.

Petitioner contends that this Court has jurisdiction to try the present case. It alleges that it received respondent's letter denying its protest letter on August 2, 2011. As such, it had thirty (30) days or until September 1, 2011 within which to appeal the same. On September 1, 2011, it filed the instant Petition for Review.

The Court finds that it has no jurisdiction over the present case.

Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> (1) **Decisions of the Commissioner of Internal Revenue in** cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." *(Emphasis supplied)*

Pertinent thereto is Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized

> representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> 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. 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

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

"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."

It is clearly and specifically stated in the afore-quoted provisions that this Court has jurisdiction over the decisions of the Commissioner of Internal Revenue in cases involving **disputed assessments**. This does not cover assessment which became final, executory and demandable.

Likewise, taxpayer is given thirty (30) days to protest the Formal Letter of Demand/Final Assessment Notice; otherwise, the assessment shall become final and executory.

Jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[47]

In the present case, the assessment has become final and executory for failure of petitioner to timely protest the Formal Letter of Demand with attached Final Assessment Notices. The law categorically states that an assessment may be protested administratively within thirty days from receipt, otherwise, it shall become final.

A perusal of the records show that the Formal Letter of Demand was received by petitioner on February 25, 2009;[48] and on May 15, 2009, petitioner protested the said assessment through a letter dated May 12, 2009.[49] These are likewise stipulated by the parties in their Joint Stipulation of Facts and Issues.[50]

As such, since petitioner's protest letter was filed beyond the thirty-day prescriptive period to file the same,

[47] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G. R. No. 196907, March 13, 2013.
[48] Exhibits "B" and "B-1".
[49] Exhibits "J" and "J-1".
[50] Pars. 15, 18, and 19, JSFI, Docket, pp. 147 to 148.

the FAN assessing petitioner for deficiency final withholding tax is already final and executory. *Ergo*, there is no disputed assessment to speak of.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division