REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LIFEBANK FOUNDATION, INC. Petitioner,	**CTA EB NO. 1727** (CTA Case No. 8836)
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 14 2019 4:23 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by the Lifebank Foundation, Inc. (LFI) under Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[1] in relation to Rule 43 of the Rules of Court seeking the reversal of the following:

1. June 23, 2017 Decision[2] of the CTA Third Division[3] the dispositive portion of which reads:

> "Having said the foregoing, the Court hereby finds that it has no jurisdiction over the case as no protest was filed within the prescriptive period, thus, rendering the assessment final, executory, and demandable.
>
> In view of the above discussions, the Court finds no cogent reason to rule on the remaining issue.

[1] Petition for Review, Rollo, p. 2.
[2] Annex B, Petition for Review, Rollo, pp. 46-62.
[3] Penned by J. Lovell R. Bautista with the concurrence of J. Esperanza R. Fabon-Victorino and J. Ma. Belen M. Ringpis-Liban.

> **WHEREFORE**, in view of the foregoing, the Petition for Review filed by petitioner Lifebank Foundation, Inc. is hereby **DENIED** due to lack of jurisdiction.
>
> **SO ORDERED.**"

2. September 20, 2017 Resolution[4] denying the petitioner LFI's Motion for Reconsideration (of the Decision dated June 23, 2017) for lack of merit.

THE FACTS

The facts, culled from the appealed decision and the records, are as follows:

The Parties

Petitioner LFI is a corporation organized and existing under the laws of the Philippines with registered address at Governor Fermin Caram St., Barangay Maria Clara, Iloilo City. It is a non-stock and non-profit corporation engaged in the creation and support of initiatives that advance comprehensive sustainable development in rural areas, such as integrated social services and micro-financing activities.[5]

Respondent is the Commissioner of Internal Revenue (CIR) who is tasked to assess and collect all national internal revenue taxes, fees, and charges and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[6]

Relevant Facts

On July 18, 2005, Revenue Region No. 11 of the BIR issued Ruling No. 021-05 (Ruling) confirming petitioner's exemption from IT on amounts received by it as such association and, therefore, need not file an income tax return for the same.[7]

On October 18, 2010, petitioner, through its authorized representative Madeleine Madero, received Letter of Authority (LOA) No. 074-2010-00000233 dated October 15, 2010 issued by Regional Director Glen A.

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[4] Annex C, Petition for Review, Rollo, pp. 63-69.
[5] Decision, Rollo, p. 47.
[6] *Id.*
[7] *Id.*

Geraldino, Revenue Region No. 11, authorizing Revenue Officers (ROs) Princess Rae Dy and Cecil Rey Panelo, and Group Supervisor (GS) Marichu Gloria Espinosa of Revenue District Office (RDO) No. 74 of Iloilo City, Iloilo, under Revenue District Officer Nelia A. Demalata (RDO Demalata), to examine petitioner's books of accounts and other financial records for *all internal revenue taxes* for calendar year (CY) / taxable year (TY) 2009.[8]

In a First Request for Presentation of Records dated October 15, 2010, issued by RDO Demalata and received by LFI's Madeleine Madero, LFI was requested to submit a list of books of accounts and other related records or documents to RDO No. 74 to expedite the investigation and verification pursuant to said LOA.[9]

In a Second and Final Notice dated November 3, 2010 sent by registered mail, RDO Demalata reiterated her request for LFI to present the accounting records listed in the first request within ten (10) days from receipt in order to allow the ROs to conduct the examination pursuant to the previously issued LOA.[10]

On September 8, 2011, a Memorandum of Assignment was issued by RDO Demalata to RO Joenifer S. Jolito (RO Jolito) and RO Revina D. Gascon (RO Gascon), and GS Cecil Rey F. Panelo (GS Panelo), authorizing the latter to continue the audit and investigation of petitioner's books of accounts due to the reassignment of previous ROs named in the LOA.[11]

Accordingly, in a letter dated September 15, 2011, RDO Demalata informed LFI that the case covered by LOA No. 074-2010-00000233 dated October 15, 2010 was reassigned to ROs Jolito and Gascon and GS Panelo.[12]

On February 7, 2012, LFI received a Notice of Informal Conference (NIC) dated February 6, 2012 with attached Details of Discrepancy issued by RDO Demalata of RDO No. 74, proposing to assess it deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), documentary stamp tax (DST), Final Tax and compromise penalties in the aggregate amount of ₱308,549,407.98.[13]

LFI sent a request for a two-month extension in order to study the findings made by the ROs in the NIC.[14]

In a letter dated March 26, 2012, RDO Demalata wrote in response to LFI's request for a two-month extension to respond to the NIC and noted that since the service of the NIC on February 7, 2012, about forty-eight (48) days

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[8] *Id.* at p. 48.
[9] Exhibit "R-3", BIR Records, p. 10.
[10] Exhibit "R-4", BIR Records, p. 11.
[11] Decision, Rollo, p. 48.
[12] Exhibit "R-5", BIR Records, p. 57.
[13] Decision, Rollo, p. 48; Exhibits "P-8" and "R-6", BIR Records, pp. 143-148.
[14] Q17, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, pp. 348-349.

had elapsed and LFI had not taken any positive action to refute the validity of the findings and/or present any documentary evidence to reconcile the variances indicated therein. Accordingly, since no documentary evidence were submitted to refute the findings despite the 48-day grace period, RDO Demalata decided to forward the case to the Assessment Division in order to assess and collect taxes due for the government.[15]

On April 3, 2012, petitioner filed its reply to the NIC through a March 31, 2012 letter.[16]

In a June 8, 2012 letter issued by RDO Demalata, the arguments raised by LFI in its March 31, 2012 reply were found to be without bases.[17]

In a July 28, 2012 letter-reply to RDO Demalata's June 8, 2012 letter, LFI presented its argument on why it is *not* liable for income tax and VAT but stated that it was amenable to the payment of EWT and DST. It further manifested that it paid a total of ₱10,581,663.30 EWT and DST per attached payment forms and receipts.[18]

In a Memorandum dated January 22, 2013, considering all the facts and information gathered, RDO Demalata, GS Panelo and ROs Gascon and Jolito recommended that the case be forward to the Assessment Division for the issuance of a Final Assessment Notice on the remaining *unpaid* tax deficiencies such as income tax, VAT, WTC, EWT, FWT and DST, and penalties.[19]

On March 20, 2013, the Assessment Division served LFI, by registered mail, a Preliminary Assessment Notice (PAN) dated February 12, 2013 with Annex A – Details of Discrepancies from Regional Director Romulo L. Aguila, Jr. (RD Aguila) of Revenue Region No. 11.[20]

On May 29, 2013, the Assessment Division served LFI, by registered mail, a Formal Letter of Demand with Details of Discrepancies, Transcript of Assessment and Final Assessment Notices (FLD/FAN) dated April 25, 2013 from the same RD Aguila of Revenue Region No. 11.[21]

However, the ROs learned from the Assessment Division that LFI did not file any reply. Upon verification with LFI's representative, they learned

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[15] Exhibit "R-7", BIR Records, p. 151.
[16] Decision, Rollo, p. 48.
[17] *Id.*; Exhibit "R-8", BIR Records, p. 190.
[18] BIR Records, pp. 193-195.
[19] Exhibit "R-9", BIR Records, pp. 260-273.
[20] Q25, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, p. 350; March 4, 2014 letter-reply of OIC-RDO Luis A. Alberto, Jr. Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563; Exhibit "R-10", BIR Records, pp. 300-305.
[21] Q26, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, p. 350; March 4, 2014 letter-reply of OIC-RDO Luis A. Alberto, Jr. Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563; Exhibit "R-20", BIR Records, pp. 306-317.

that LFI did not receive the PAN and the FLD/FAN.[22] Accordingly, the Assessment Division requested the ROs to personally serve them to LFI's present address, which they eventually did on July 2, 2013 (PAN) and on August 2, 2013 (FLD/FAN).[23]

On July 2, 2013, petitioner received a PAN dated February 12, 2013, informing the company that it has deficiency IT and VAT and suggested compromise penalties in the aggregate amount of ₱274,687,894.25, inclusive of interest and compromise penalty.[24]

On July 16, 2013, petitioner LFI filed its reply to the PAN through a July 9, 2013 letter (Reply to PAN) disputing the proposed assessments.[25]

On August 2, 2013, LFI received a FLD/FAN dated April 25, 2013 from the same RD Aguila of Revenue Region No. 11. The FLD/FAN assessed petitioner for deficiency IT and VAT in the aggregate amount of ₱282,055,951.22, inclusive of interest, compromise and other administrative penalties.[26]

Thereafter, a Memorandum of Assignment dated August 30, 2013 was issued by RDO Demalata of RDO No. 74 to RO Jolito, RO Gascon and GS Panelo, referring the case for reinvestigation. This was received by petitioner on September 5, 2013.[27]

On October 11, 2013, petitioner LFI received a letter dated October 8, 2013 addressed to Ms. Medelene Perales, Supervisor, Finance and Accounts Department of LFI. Said letter, in reply to LFI's protest to the *PAN*, reiterated that LFI failed to introduce evidence refuting the previous findings/assessment, that the bases of LFI's protest on the PAN were already addressed in the February 6, 2012 NIC and the June 8, 2012 letter and, thus, the docket of the case was returned to the Office of the Regional Director for appropriate action.[28]

On January 16, 2014, LFI received a Final Notice Before Seizure dated January 14, 2014 from OIC-Revenue District Officer Luis A. Alberto, Jr. (OIC-RDO Alberto) of RDO No. 74 requesting settlement of deficiency IT in the amount of ₱146,185,993.46, deficiency VAT of ₱135,789,957.76, and compromise penalty of ₱80,000.00.[29] gr

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[22] Q24-Q30, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, p. 350; March 4, 2014 letter-reply of OIC-RDO Luis A. Alberto, Jr. Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563.
[23] Q27-Q33, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, pp. 350-351; March 4, 2014 letter-reply of OIC-RDO Luis A. Alberto, Jr. Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563.
[24] Decision, Rollo, pp. 48-49; Exhibit "R-10", BIR Records, pp. 300-305.
[25] Decision, Rollo, p. 49.
[26] *Id.*
[27] *Id.*
[28] BIR Records, p. 336; This letter was also referred to in the March 4, 2014 letter of OIC-RDO Luis A. Alberto, Jr. addressed to the counsel for petitioner LFI, Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563.
[29] Decision, Rollo at p. 49.

On February 20, 2014, petitioner filed by registered mail its protest to the Final Notice Before Seizure with RDO No. 74 addressed to RD Aguila and OIC-RDO Alberto.[30]

Through a letter dated February 16, 2014 with attached Payment Forms and Deposit Slips and through a Certification from the Collection Section of RDO No. 74, the ROs learned that LFI settled forty percent (40%) of the basic deficiency taxes.[31]

On May 15, 2014, petitioner LFI received a March 4, 2014 letter-reply to its February 6, 2014 and February 16, 2014 letters from OIC-RDO Alberto denying its protest.[32] The March 4, 2014 letter clarified that:

- In adherence to due process and proper notice, the PAN and the FAN were served *initially* by registered mail to LFI's registered address on March 20, 2013 and May 29, 2013, respectively.

- Thereafter, the PAN and FAN were personally served to LFI's *new* address on July 2, 2013 and August 2, 2013, respectively. Hence, this explains why the date of FAN (April 25, 2013) is earlier than the date of personal service of PAN (July 2, 2013);

- The RDO responded to LFI's letter of protest on PAN in an October 8, 2013 letter to Medelene Perales;

- The issues on tax exemption were already discussed with LFI's previous representative, Mr. Jofel C. Hilaga; and,

- LFI's *application for compromise* will be forwarded to the National Evaluation Board at the National Office.

CTA Third Division Proceedings

Consequently, on June 16, 2014, petitioner filed a Petition for Review with the Court *a quo*.[33]

On August 26, 2014, after being granted two (2) extensions, respondent filed his Answer by registered mail.[34]

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[30] *Id.*
[31] Q35-Q40, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, pp. 352-353; Exhibits "R-13" to "R-17", BIR Records, pp. 349-352, 458.
[32] Decision, Rollo at p. 50; Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563.
[33] Decision, Rollo at p. 50.
[34] *Id.*

On September 5, 2014, respondent filed a Motion to Admit Attached *Amended* Answer, which was granted by the Court in a Resolution dated October 20, 2014.[35]

In his Amended Answer, respondent interposed the following Special and Affirmative Defenses, specifically stating that:

- The Court is bereft of jurisdiction to hear the Petition for Review;

- The assessment for deficiency IT, VAT and compromise penalties were issued in accordance with law, rules and jurisprudence; and,

- Petitioner is not exempt from IT and VAT.[36]

On December 5, 2014 and April 29, 2015, respectively, petitioner and respondent filed their Pre-trial Briefs.[37]

On March 20, 2015, respondent filed an Omnibus Motion (1) Motion for Leave to Admit Respondent's Amended Pre-Trial Brief; (2) Motion to Defer Filing of Joint Stipulation of Facts and Issues; (3) Motion to Defer Transmittal of BIR Records (Omnibus Motion), which was granted by the Court in a June 18, 2015 Resolution, thus, admitting the attached Respondent's Amended Pre-trial Brief.[38]

On July 3, 2015, the parties filed their Joint Stipulation of Facts and Issues.[39]

On July 20, 2015, the Court a quo issued a Pre-Trial Order.[40]

On September 18, 2015, petitioner filed its Formal Offer of Evidence with Motion for Permanent Marking, offering Exhibits "P-1," "P-2," "P-3," "P-4," "P-5," "P-5.1," "P-6," "P-7," "P-8," "P-8.1," "P-9," "P-9.1," "P-10," "P-11," "P-12," "P-12.1," "P-13," "P-13.1," "P-14," "P-15," and "P-15.1" as evidence. This was resolved by the Court in a Resolution dated December 11, 2015, admitting all of the foregoing exhibits.[41]

On March 29, 2016, respondent filed the Formal Offer of Evidence, offering Exhibits "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "R-14," "R-15," "R-16," "R-17," "R-18," "R-19," "R-20," "R-21," and "R-21-a" as evidence. The Court admitted all the offered evidence in a Resolution dated June 7, 2016.[42]

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[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.* at p. 51.
[40] *Id.*
[41] *Id.*
[42] *Id.*

On July 12, 2016, petitioner filed its Memorandum and, after an extension, respondent also filed his Memorandum (For Respondent) on August 8, 2016 via registered mail.[43]

On August 26, 2016, the Court submitted the case for decision.[44]

On June 23, 2017, the CTA Third Division promulgated a decision which denied the petition for lack of jurisdiction.[45]

On July 19, 2017, petitioner LFI moved for reconsideration of the decision which the Court *a quo* denied on September 20, 2017 for lack of merit.[46]

CTA En Banc Proceedings

On October 18, 2017, petitioner LFI filed its Petition for Review and appealed to the CTA *En Banc*.[47]

On October 19, 2017, petitioner LFI filed an *Ex-Parte* Manifestation stating that, due to oversight, its counsels inadvertently failed to include the name of the firm under which they are connected.[48]

In a November 23, 2017 Resolution, respondent CIR was ordered to file his Comment within ten (10) days from notice.[49]

In a January 29, 2018 Resolution, the Court noted that, upon verification of records, respondent failed to file his Comment within the period granted. Accordingly, the Court gave due course to the petition and gave the parties thirty (30) days from notice to file their memoranda.[50]

On March 7, 2018, petitioner filed its Memorandum.[51]

On March 9, 2018, respondent filed a Motion for Extension of Time to File Memorandum.[52]

With the filing of petitioner's Memorandum and in view of the Records Verification Report of the Judicial Records Division stating that respondent

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[43] *Id.*
[44] *Id.*
[45] Annex B, Petition for Review, Rollo, pp. 46-62.
[46] Resolution, Annex C, Petition for Review, Rollo, pp. 63-69.
[47] Rollo, pp. 1-40.
[48] *Id.* at pp. 436-437.
[49] *Id.* at pp. 439-440.
[50] *Id.* at pp. 443-444.
[51] *Id.* at pp. 445-482.
[52] *Id.* at pp. 486-488.

failed to file a memorandum, the Court submitted the case for decision in a May 16, 2018 Resolution.[53]

THE ISSUES

The petitioner LFI prays that the Court *En Banc* reverse and set aside the June 23, 2017 Decision of the CTA Third Division and raised *the same* issues for resolution stated in its petition below:

> "1. Whether or not the FLD/FAN and Final Notice are void; and,
>
> 2. Whether or not petitioner is liable for deficiency income tax, value-added tax and compromise penalties in the amount of PhP146,185,993.46, PhP 135,789,957.76 and PhP80,000, respectively."[54]

THIS COURT'S RULING

We deny the LFI's petition for lack of merit.

Petitioner LFI prays for the reversal of the decision grounded on the same points it raised in the court below: The FLD/FAN cannot be considered as the final notice required under the National Internal Revenue Code of 1997 (1997 NIRC) which would warrant the collection of taxes in view of the subsequent "letter" issued by the BIR referring the case for reinvestigation.[55]

First, one very crucial distinction should be emphasized. The document issued by the BIR is *not a letter* addressed to LFI. That is a misleading term conveniently used by petitioner to support its argument. It is, *in fact*, an internal *Memorandum of Assignment*, which LFI, in good faith, could *not* have reasonably relied upon in believing that there was reinvestigation after its receipt of the FLD/FAN. It is an internal document issued by RDO Demalata and addressed to the ROs Jolito and Gascon and GS Panelo. It is *not* a letter intended for LFI to inform it of the official action taken by the respondent on the assessment:

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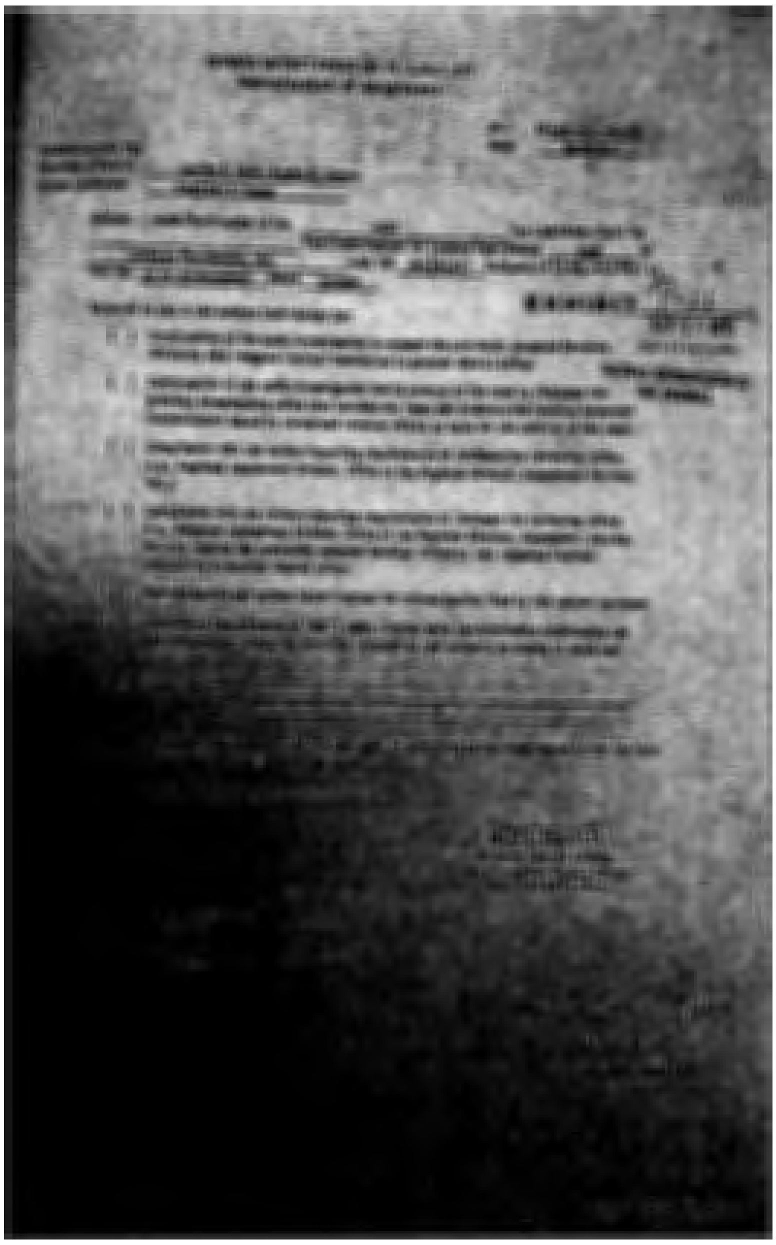
[53] *Id.* at pp. 493-494.
[54] Petition for Review, Rollo, p. 8; July 20, 2015 Pre-Trial Order, Division Docket Vol. 1, pp. 417-418; Petition for Review, Division Docket Vol. 1, pp. 10-11.
[55] Petition for Review, Rollo, pp. 9-22; Petition for Review, Division Docket, Vol. 1, pp. 11-15.



The Court *a quo* deftly disposed of petitioner's argument in this manner:

> "A careful reading of the above will show that the Memorandum of Assignment is merely an internal communication among the BIR officers to guide the assigned ROs in proceeding with the assessment. It is not even addressed to petitioner. Petitioner was given a copy only for its information and records.
>
> The Memorandum of Assignment appears to be an offshoot of the Reply to PAN filed by petitioner on July 16, 2013. Records reveal that subsequent to the August 30, 2013 Memorandum, OIC-RDO Alberto informed petitioner of its decision to the Reply to PAN in a letter dated October 8, 2013, addressed to Medelene Perales, and received by a certain Jonemae Legada on October 11, 2013, which reads as follows:
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> xxx xxx xxx

> Taking everything into consideration, the Court concludes that the August 30, 2013 Memorandum was not issued to revoke the previously issued FLD/FAN. It was issued in view of the Reply to PAN filed by petitioner. Otherwise, the ROs will have nothing to '[r]einvest[e] per protest letter/request for reinvestigation filed by [petitioner]' considering that there was no protest to the FLD/FAN filed by petitioner as of date. Petitioner itself knows for a fact that it did not file any protest to the FLD/FAN to initiate the process of reinvestigation of the assessment; hence, it is illogical for it to think that the reinvestigation arose from its protest to the FLD/FAN instead of from the PAN, to which it actually filed a reply.
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> Most importantly, the Memorandum, although dated August 30, 2013, was actually received by petitioner on September 5, 2013,[72] through a certain Mary Grace C. Barrios. Thus, petitioner could not have known about its existence until September 5, 2013, or four (4) days after the thirty (30)-day period to file a protest to the FLD/FAN has already lapsed. Prudence dictates that petitioner should have filed the protest on or before September 2, 2013, if only to protect its interest. Petitioner simply slept on its rights." (*underscoring supplied*)

Accordingly, LFI's reliance on the August 30, 2013 Memorandum of Assignment is *misplaced* and *cannot justify* its failure to file a proper protest within thirty-day period after receiving the FLD/FAN on August 2, 2013.

Second, petitioner LFI argues further that even assuming for the sake of argument that the FLD/FAN can be considered as the final demand required under Section 228 of the 1997 NIRC, the same is void because it was issued in violation of petitioner's right to due process. Specifically, LFI insists that April 25, 2013 FLD/FAN was prepared and issued months before petitioner received the PAN on July 2, 2012.

This is incorrect.

Contrary to petitioner's statement that the FLD/FAN was issued *before* the receipt of the PAN, RO Gascon was able to explain why the FLD/FAN was dated April 25, 2013, *several months* before the stipulated receipt of PAN on July 2, 2013.

In RO Gascon's testimony, she narrated that there were actually two attempts to serve both the PAN and the FLD/FAN: *first* by registered mail to the original address and *then after* by personal service to the *new address*, when the ROs learned that there was no reply because LFI allegedly did not receive the PAN and FLD/FAN.[56] Specifically:

[56] Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, Vol. 1, p. 345-354.

- On March 20, 2013, the PAN dated February 12, 2013 with Annex A – Details of Discrepancies was served to LFI by the Assessment Division through registered mail.[57]

- On May 29, 2013, FLD/FAN dated April 25, 2013 was served to LFI by the Assessment Division through registered mail.[58]

- On July 2, 2013, LFI received the PAN dated February 12, 2013, which was sent by personal service of the ROs.[59]

- On August 2, 2013, LFI received the FLD/FAN dated April 25, 2013, which was sent by personal service of the ROs.[60]

The details of this testimony tie up with the explanation in the March 4, 2014 letter of OIC-RDO Alberto on why the date of the FLD/FAN (April 25, 2013) was earlier than the date of the *second* service of the PAN (July 2, 2013):[61]

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[57] Q25, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, Vol. 1, p. 350; March 4, 2014 letter-reply of OIC-RDO Luis A. Alberto, Jr. Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563; Exhibit "R-10", BIR Records, pp. 300-305.
[58] Q26, Judicial Affidavit of RO Gascon, Exhibit "R-21", Division Docket, Vol. 1, p. 350; March 4, 2014 letter-reply of OIC-RDO Luis A. Alberto, Jr. Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563; Exhibit "R-20", BIR Records, pp. 306-317.
[59] Decision, Rollo, pp. 48-49; Exhibit "R-10", BIR Records, pp. 300-305.
[60] Decision, Rollo, pp. 48-49.
[61] Exhibit "P-14", Division Docket, Vol. 2, pp. 562-563.

Clearly, as the sequence of events bear out, respondent granted LFI sufficient time to respond to the PAN, first served on March 20, 2013 and then July 2, 2013, and *thereafter* to protest the FLD/FAN, served on May 29, 2013 and August 2, 2013, before it received the Final Notice Before Seizure on January 16, 2014.

Yet, notwithstanding petitioner's attempts to *reinterpret* the facts, it does not provide a credible explanation why it failed to file its protest after it received the FLD/FAN on August 2, 2013.

From August 2, 2013, LFI had thirty (30) days to prepare and file its protest to the FLD/FAN, or until *September 2, 2013.*[62] It was only on September 5, 2013, *three (3) days after the thirty-day period to file a protest to the FLD/FAN had lapsed,* when it learned about the reinvestigation contained in an internal Memorandum. And yet, casting prudence aside, it waited for the January 16, 2014 Final Notice Before Seizure, before it finally filed its protest on February 20, 2014--- *two hundred and two (202) days after receipt of the FLD/FAN.*

The Court *a quo* correctly observed that "prudence dictates that petitioner should have filed the protest on or before September 2, 2013, if only to protect its interest. Petitioner simply slept on its rights."[63]

Section 228 of the 1997 NIRC is clear. A taxpayer is required to file its protest to the assessment within thirty (30) days from receipt. Otherwise, failure to file the protest makes the assessment final, executory and demandable. Thus:

> "**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:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
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> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

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[62] September 1, 2013 fell on a Sunday.
[63] Decision, Rollo, p. 59.

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

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

<u>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</u>. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; <u>otherwise, the assessment shall become final</u>.

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

In the case of *Commissioner of Internal Revenue v. Bank of Philippine Islands*,[64] the Supreme Court ruled that failure of taxpayer to file a protest to the assessment within thirty (30) days from receipt means that the assessment becomes *final* and *unappealable*. Consequently, the taxpayer is barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits:

"The CA never disputed these findings of fact by the CTA:

> [T]his Court recognizes that the [CTA], which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the [CTA].

<u>Under the former Section 270, there were two instances when an assessment became final and unappealable: (1) when it was not protested</u> gr

[64] G.R. No. 134062, April 17, 2007.

within 30 days from receipt and (2) when the adverse decision on the protest was not appealed to the CTA within 30 days from receipt of the final decision:

Sec. 270. Protesting of assessment.

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by the implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the [CTA] within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

IMPLICATIONS OF A VALID ASSESSMENT

Considering that the October 28, 1988 notices were valid assessments, BPI should have protested the same within 30 days from receipt thereof. The December 10, 1988 reply it sent to the CIR did not qualify as a protest since the letter itself stated that '[a]s soon as this is explained and clarified in a proper letter of assessment, we shall inform you of the taxpayer's decision on whether to pay or protest the assessment.' Hence, by its own declaration, BPI did not regard this letter as a protest against the assessments. As a matter of fact, BPI never deemed this a protest since it did not even consider the October 28, 1988 notices as valid or proper assessments.

The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments: xxx." (*underscoring supplied*)

Third, by failing to file a protest *on time* under Section 228 of the 1997 NIRC, petitioner was also unable to challenge the presumption of correctness of tax assessments.

Tax assessments by the examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments. Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 228 of the 1997 NIRC on protests on assessments of internal revenue taxes.[65]

Fourth, in the course of the tax investigation, the following notices/letters/documents have more than sufficiently apprised LFI of the factual and legal bases of respondent's findings in compliance with Section 228 of the 1997 NIRC. Records will show that LFI responded in writing to all of these, *except only its protest to the FLD/FAN*:

- NIC dated February 6, 2012 with Details of Discrepancy, received on February 7, 2012.[66]

- Letter to LFI dated March 26, 2012 in connection with the two (2)-month extension it requested to respond to the NIC.[67]

- Letter to LFI dated June 8, 2012, received on even date, which refuted LFI's claim of income tax exemption and reiterated it was liable for IT, VAT, WTC, EWT, DST and FWT.[68]

- PAN dated February 12, 2013 with Details of Discrepancies, received on July 2, 2013.[69]

- FLD/FAN dated April 25, 2013, with Details of Discrepancies and Transcript of Assessment, received on August 2, 2013.[70]

The foregoing notices/letters/documents belie petitioner's theory that it was denied due process in the proceedings before the administrative agency. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side.[71] The facts clearly establish that petitioner LFI had had several opportunities to refute the findings of the examiners. Accordingly, the Court cannot but conclude that respondent CIR had scrupulously observed due process.

Finally, petitioner LFI may have obtained a ruling in its favor in 2005 but a subsequent investigation by the examiners in 2010 has uncovered that it was engaged in taxable activities of micro-finance and/or lending money at interest.

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[65] *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez, et al.*, G.R. No. 177279, October 13, 2010.
[66] Exhibit "P-8" / "R-6", BIR Records, pp. 112-148.
[67] Exhibit "R-7", BIR Records, p. 151.
[68] Exhibit "R-8", BIR Records, pp. 188-190.
[69] Exhibit "R-10", BIR Records, pp. 300-305.
[70] Exhibit "R-20", BIR Records, pp. 306-317.
[71] *Bureau of Customs v. Hon. Margarito B. Teves, et al.*, G.R. No. 181704, December 6, 2011.

In this connection, petitioner LFI should note that there is a *limitation* or *condition* placed on the validity of the opinion it obtained from Regional Director Sonia L. Flores. Specifically, it states that:[72]

> "This ruling is hereby issued on the basis of the foregoing representations and in reiteration of existing analogous BIR rulings heretofore issued. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void." (*underscoring supplied*)

This limitation is consistent with the well-entrenched principle that *estoppel* does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[73] For there are no vested rights to speak of respecting an incorrect construction of the law by the administrative officials and such wrong interpretation cannot place the government in *estoppel* to correct or overrule the same.[74]

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The June 23, 2017 Decision and the September 20, 2017 Resolution are hereby **AFFIRMED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(*See Separate Concurring Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

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[72] Exhibit "P-2", Division Docket, Vol. 1, pp. 453-454.
[73] *Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al.*, G.R. No. 211093, June 6, 2017.
[74] *Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LIFEBANK FOUNDATION, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1727
(CTA Case No. 8836)

Members:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
MAY 14 2019 4:23 p.m.

x- -x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review filed by Lifebank Foundation, Inc. (LFI) which assails the Court in Division's Decision dated June 23, 2017 and Resolution dated September 20, 2017. I submit that the Court in Division was deprived of jurisdiction to take cognizance of the Petition for Review in CTA Case No. 8836 for failure of LFI to file the same within the thirty (30)-day period reckoned from its receipt of the Final Notice Before Seizure dated January 14, 2014 on January 16, 2014.

The Final Notice Before Seizure dated January 14, 2014[1] reads:

> "On January 6, 2014 this Office sent you a letter requesting the settlement of the above-cited account. However, despite the considerable length of time given to you, we have not been favored with any reply.

[1] Exhibit "R-12".

> In this connection, we would like to inform you that we are again giving you the last opportunity to make the necessary settlement of the above-stated tax liability/liabilities within ten (10) days from receipt of this notice, Should we fail to hear from you within this period, this office, much to our regret, will be constrained to serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account. Simultaneously, to protect the interest of the Government, your case will be referred to the Legal Division, for the filing of appropriate action."

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, recognizes the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA) to review on appeal decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments or other matters arising under the NIRC.[2] Section 11 of RA 1125, as amended, provides that a party adversely affected by the decision of the CIR may file an appeal with the CTA within thirty (30) days after the receipt of such decision.[3]

Undeniably, the Final Notice Before Seizure dated January 14, 2014, **(issued after the final assessment notice has become final and executory for failure of LFI to protest the same)**, falls within the ambit of "other matters" clause of Section 7 (1) of RA No. 1125, as amended by RA No. 9282, which is appealable to the CTA within thirty (30) days from receipt thereof.

The filing of LFI's February 6, 2014 Letter[4] protesting the Final Notice Before Seizure did not toll the thirty (30)-day period to appeal the Final Notice Before Seizure to the CTA. Consequently, the thirty-day period to appeal continued to run despite the filing by LFI of said February 6, 2014 Letter.

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

[3] Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx

[4] Exhibit "P-12-1".

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The March 4, 2014 Letter-Reply of OIC-Revenue District Officer Luis A. Alberto, Jr.[5], responding to the issues raised by LFI in its February 6, 2014 Letter[6] protesting the Final Notice Before Seizure and February 16, 2014 Letter transmitting proof of payment of the 40% basic deficiency taxes, could not be considered as "other matter" that is appealable to the CTA.

Indeed, not all letters/communication by the Bureau of Internal Revenue (BIR) to taxpayers may be considered as "other matters" appealable to the CTA or be the subject of petitions for review; otherwise, it would open the avenue to multiple appeals being available every time a letter is issued by the BIR to enforce a final and executory assessment. Certainly, the law never intended all letters to fall within the category of "other matters" which can be the subject of multiple or successive review by the Court

To prevent the Final Notice Before Seizure from becoming final and executory, LFI should have filed its appeal with the CTA within thirty (30) days from its receipt thereof on January 16, 2014 or on or before **February 15, 2014**. The Petition for Review before the Court in Division was filed by LFI only on **June 16, 2014**, thus, the same was clearly filed beyond the thirty (30)-day reglementary period. As a consequence, the Court in Division was deprived of its jurisdiction to act on the Petition for Review, to review the correctness and validity of the Final Notice Before Seizure and the final assessment notice, and to make a declaration that the final assessment notice is void and could not attain finality. **Otherwise stated, the Court in Division was deprived of its authority to invalidate the Final Notice Before Seizure and the final assessment notice as it cannot decide the case on the merits.[7] The only power left with the Court in Division was to dismiss the case.**

It is well-settled that **perfection of appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and **precluding the appellate court from acquiring jurisdiction over the case.** The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[8] The thirty (30)-day period within which to file an appeal with the CTA is

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[5] Exhibit "P-14".
[6] Exhibit "P-12-1".
[7] Nippon Express (Philippines) Corp. vs. CIR, G.R. No. 185666, February 4, 2015.
[8] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.

jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[9]

All told, I **VOTE** to: (i) **DENY** the present Petition for Review filed by Life Bank Foundation, Inc. for lack of merit; and, (ii) **DISMISS** the Petition for Review in CTA Case No. 8836 for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice

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[9] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.