REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JOVITA G. PANOPIO,
Petitioner,

CTA Case No. 9464

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 06 2019
2:15 p.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

This involves the Amended Petition for Review (With Application for the [Issuance] of Writ of Preliminary Injunction and Temporary Restraining Order)[1] filed by Jovita G. Panopio against the Commissioner of Internal Revenue (CIR) pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, in relation to Section 3(a)(2) of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner assails the deficiency income tax and value-added tax (VAT) assessments for taxable year 2007 issued against her in

[1] Docket, pp. 40-60.

aggregate amount of FOUR MILLION EIGHT HUNDRED FORTY THOUSAND FIVE HUNDRED FIFTY-EIGHT PESOS AND 10/100 (₱4,840,558.10), inclusive of increments, as indicated in Assessment Notice Nos. F-031-LNTF-07-VT-029 and F-031-LNTF-07-IT-029 both dated May 10, 2011 and Final Assessment Notice (FAN) dated May 27, 2011. Petitioner also assails the Warrant of Distraint and Levy (WDL) and/or Tax Lien and Notice of Levy on Real Property issued on the basis of the foregoing assessments as well as the auction sale of petitioner's properties conducted pursuant thereto.

THE FACTS

Petitioner Jovita G. Panopio is a registered taxpayer with Tax Identification Number 111-071-994 and registered address at 2546 Tindalo Street, Tondo, Manila.[2] Petitioner is the proprietor of JG Panopio Designers and Builders, a sole proprietorship with registered address at 2546 Tindalo Street, Sta. Cruz, Manila.[3]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC).

Records show that on December 2, 2015, petitioner was furnished with a copy of the Final Assessment Notice (F-031-LNTF-07-IT-029/ F-031-LNTF-07-VT-029) dated May 27, 2011 with attached Assessment Notice No. F-031-LNTF-07-IT-029 and Assessment Notice No. F-031-LNTF-07-VT-029 both dated May 10, 2011.[4]

In a letter dated June 13, 2016 addressed to Ms. Elvira R. Vera, Assistant Commissioner of the BIR Collection Service, petitioner states that she never received any document pertaining to her alleged tax liabilities for taxable year 2007 under Assessment Notice Nos. F-031-LNTF-07-IT-029/VT-029 and she found out that the documents being

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[2] Joint Stipulation of Facts and Issues (JSFI), Docket, p. 274.
[3] *Id.*
[4] Par. 8, Petition for Review, Docket, p. 11; Par. 8, Amended Petition for Review, Docket, p. 43; Exhibits "R-7" to "R-7-B", BIR Records, pp. 32-36.

sent to her regarding the foregoing were sent to a wrong address.[5] As such, she contends that she was not given the chance to explain and prove that she had properly paid the taxes due for taxable year 2007.[6] In the same letter, petitioner also claims that she only found out that her property located at 2546 Tindalo St., Tondo, Manila was under tax levy when she requested a certified true copy of her Transfer Certificate of Title for the said property.[7]

On September 8, 2016, petitioner filed a Petition for Review (With Application for [Issuance] of Writ of Preliminary Injunction and Temporary Restraining Order) before this Court.[8]

On September 13, 2016, this Court issued Summons[9] to respondent requiring him to file an Answer within fifteen (15) days from notice.

On September 14, 2016, this Court issued a Notice of Hearing[10] regarding petitioner's Application for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order. On even date, this Court received petitioner's Amended Petition for Review (With Application for [Issuance] of Writ of Preliminary Injunction and Temporary Restraining Order).

During the hearing held on September 19, 2016, this Court treated petitioner's Application for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order as a Motion for Suspension of Collection of Tax.[11] This Court granted the said motion subject to the posting of an acceptable surety bond in the amount equivalent to one and one-half times of the alleged deficiency VAT and income tax assessments within fifteen (15) days from notice.[12]

[5] Exhibit "P-9", Docket, p. 246.
[6] *Id.*
[7] *Id.*
[8] Docket, pp. 10-22.
[9] *Id.*, p. 38.
[10] *Id.*, p. 39.
[11] Minutes of the Hearing dated September 19, 2016, Docket, p. 83.
[12] Order dated September 19, 2016, Docket, pp. 84-85.

Within the extended period granted by this Court,[13] respondent filed his Answer[14] on November 22, 2016 wherein he interposes the following Special and Affirmative Defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. Petitioner, in disputing the assessment, anchored its claim that that (sic) Assessment Notice No. F-031-LNTF-07-IT-029 and Assessment Notice No. F-031-LNTF-07-VT-029 both dated 10 May 2011 were null and void for the following reasons:

   a. That the issuance of the assessment Notices was not covered by a Letter of Authority;

   b. That the Assessment Notices were fraudulent for bearing the signature of Commissioner Kim S. Jacinto-Henares prior to her appointment; and

   c. That the Assessment Notices failed to comply with the due process requirements under Revenue Regulations No. 12-99 since the same were sent to 2456, Tindalo St., STA CRUZ, Manila instead of 2546, Tindalo St., TONDO, Manila.

6. Respondent disagrees.

7. First, records disclose that Letter of Authority No. LOA 2009 00017199 (LOA) was issued by respondent on 11 May 2010 pursuant to Letter Notice No. 031-TRS-07-AD-00022 for the examination of petitioner, J.G. Panopio Designers and Builders' (JG Builders) books of accounts and other accounting records for taxable year 2007. The same was sent via registered mail on 11 June 2010 to petitioner as evidenced by Registry Receipt No. 918714.

[13] Order dated October 3, 2016, Docket, p. 118; Order dated November 3, 2016, Docket, p. 123; Order dated December 2, 2016, Docket, p. 131.
[14] Docket, pp. 132-137.

8. As a background thereto, in 2003, petitioner Jovita G. Panopio registered her sole proprietorship under the trade name JG Builders with registered address at 2546, Tindalo St., Sta. Cruz, Manila.

9. Sometime in 2010, through respondent's Reconciliation of Listing for Enforcement (RELIEF), it was found that petitioner, JG Builders was liable for deficiency Income Tax and Value-Added Tax (VAT) for taxable year 2007.

10. Hence, Letter Notice No. 031-TRS-07-AD-00022 together with the RELIEF information on its discrepancies resulting to tax deficiencies was sent to the registered address of petitioner JG Builders via registered mail as evidenced by Registry Receipt No. 915269 on 17 May 2010 giving petitioner the chance to reconcile said discrepancies. The same was sent to petitioner's registered address at 2546, Tindalo St., Sta. Cruz, Manila.

11. Hearing nothing from petitioner, a Follow Up Letter was sent to petitioner JG Builders through registered mail as evidenced by Registry Receipt No. 916891 on 24 May 2010. The same was sent to petitioner's registered address.

12. Consistently, petitioner failed to reply. Hence the LOA was issued and sent together with the Notice of Informal Conference via registered mail, again, to petitioner JG Builders' registered address.

13. Subsequently, without any action from petitioner, the Preliminary Assessment Notice, Final Assessment Notice, Preliminary Collection Letter and Final Notice Before Seizure were all issued and sent to petitioner JG Builders via registered mail to petitioner JG Builders' registered address.

14. Again, neither petitioner JG Buillders (sic) nor petitioner Jovita G. Panopio herself did anything on said notices. Hence, the administrative process of collection was initiated by the Bureau of Internal Revenue.

15. In fact, on 2 August 2016, respondent informed petitioner that the its (sic) properties are being auctioned in a public auction scheduled on 8 September 2016 as satisfaction for JG Builders' deficiency taxes.

16. Therefore, from the foregoing, it is clear that petitioner was not and was never deprived of its constitutionally protected right to due process. In fact, petitioner was given all opportunities to present its side. It, however, chose to slept (sic) on its rights thereby barring any contest on any aspect of the assessment.

17. Second, to be clear, the Formal Letter of Demand and Final Assessment Notice, contrary to petitioner's claim was signed by Kim S. Jacinto-Henares on 11 May 2011 and not 11 May 2010.

18. As petitioner claimed, Kim S. Jacinto-Henares was appointed on in July 2010. Thus, she has every authority to sign the Formal Letter of Demand and Final Assessment Notices as she was appointed almost ten (10) months before the issuance of the same.

19. Finally, petitioner Jovita G. Panopio contended that she did not receive any of the notice(s) sent by respondent since the same were sent to 2456, Tindalo St., STA CRUZ, Manila instead of 2546, Tindalo St., TONDO, Manila.

20. To be clear, the taxpayer being subjected to audit is JG Builders.

21. JG Builders, as evidenced by its Certificate of Registration with the Bureau of Internal Revenue, is registered with Revenue District Office No. 31 – Sta. Cruz Manila.

22. Further, its registered place of business is 2456 Tindalo St., Sta Cruz, Manila.

23. Petitioner Jovita G. Panopio is definitely mistaken in her claim that the notices meant for her business should

have been sent to her home address at 2546 Tindalo St., Tondo, Manila since this is not the registered place of business of JG Builders.

24. In fact, if she intended to change JG Builders' place of business thereby giving her the assurance that notices and processes are sent to 2546 Tindalo St., Tondo, Manila, she should have filed an application with respondent for an update of information.

25. However, there was none.

26. Hence, clearly, petitioner cannot reasonably expect that the notices be sent to her home address instead of the registered place of business of JG Builders.

27. Therefore, clearly, the assessment for deficiency Income Tax and VAT must stand."

Meanwhile, in a Resolution dated November 24, 2016,[15] this Court lifted and set aside the Order dated September 19, 2016 granting petitioner's Motion to Suspend Collection of Tax on the basis of the Judicial Records Division's Report dated November 22, 2016 that petitioner failed to post the required surety bond.

Respondent filed his Pre-trial Brief on January 20, 2017[16] while petitioner filed her Pre-trial Brief on February 1, 2017.[17] The Pre-trial Conference[18] was held on February 2, 2017.

On March 31, 2017, petitioner filed an Omnibus Motion to Admit:[19] (1) Amended Pre-trial Brief;[20] (2) Amended Judicial Affidavit of Jovita Panopio;[21] and (3) Special Power of Attorney.[22] This Court granted such Omnibus Motion on April 3, 2017.[23]

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[15] *Id.*, p. 130.
[16] *Id.*, pp. 141-144.
[17] *Id.*, pp. 150-154.
[18] Minutes of the Hearing dated February 2, 2017, Docket, p. 185.
[19] Docket, pp. 266-268.
[20] *Id.*, pp. 260-265.
[21] *Id.*, pp. 218-226.
[22] *Id.*, p. 217.
[23] Order dated April 3, 2017, Docket, p. 270.

Another Pre-trial Conference was held on May 22, 2017.[24] On May 25, 2017, the parties filed their Joint Stipulation of Facts and Issues (JSFI)[25] which this Court approved and adopted in the Pre-trial Order dated June 5, 2017.[26]

During the trial, petitioner Jovita G. Panopio was presented as sole witness.[27] There being no other witnesses to be presented, this Court gave petitioner five (5) days from June 21, 2017 within which to file her Formal Offer of Evidence (FOE).[28] Petitioner, however, failed to file her FOE as per the Report of the Judicial Records Division dated June 30, 2017.[29] Thus, in a Resolution dated July 5, 2017,[30] petitioner was deemed to have waived her right to formally offer her exhibits and to have rested her case.

On July 21, 2017, petitioner filed an Omnibus Motion for Reconsideration and for Admission of Formal Offer of Evidence with Notice of Change of Address.[31] Attached to said Omnibus Motion is petitioner's FOE.[32] On August 14, 2017, respondent filed his Comment to petitioner's Omnibus Motion.[33] In a Resolution dated September 20, 2017,[34] this Court granted petitioner's Omnibus Motion for Reconsideration and Admission of Formal Offer of Evidence. Correspondingly, Petitioner's FOE was admitted.[35] In the same Resolution, this Court likewise lifted and set aside its previous Resolution dated July 5, 2017.

On October 6, 2017, respondent filed his Comment/Opposition (To Petitioner's Formal Offer of Evidence dated 23 June 2017).[36]

In a Resolution dated February 8, 2018,[37] this Court admitted Exhibits "P-1", "P-3" to "P-3-C", "P-3-D", "P-3-E", "P-13" to "P-13-A", "P-14" to "P-14-A", "P-15" to "P-15-A" and "P-16" to "P-16-A" of

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[24] Minutes of the Hearing dated May 22, 2017, Docket, p. 272.
[25] Docket, pp. 274-276.
[26] *Id.,* pp. 278-282.
[27] Minutes of the Hearing dated June 14, 2017, Docket, p. 283.
[28] Order dated June 14, 2017, Docket, p. 284.
[29] Docket, p. 286.
[30] *Id.*, p. 288.
[31] *Id.*, pp. 289-291.
[32] *Id.*, pp. 292-297.
[33] *Id.*, pp. 300-302.
[34] *Id.*, pp. 305-308.
[35] *Id.*
[36] *Id.*, pp. 310-312.
[37] *Id.*, pp. 315-316.

petitioner's FOE. However, this Court denied the admission of Exhibits "P-2", "P-4", "P-7" to "P-7-B", "P-10", "P-11", "P-11-A", "P-12" to "P-12-A" and "P-17" for failure to present their originals for comparison.[38] Also denied admission were Exhibits "P-5" and "P-6" for failure to present the originals for comparison and for failure of the exhibits formally offered and identified to correspond with the documents marked.[39] Exhibits "P-8", "P-9" to "P-9-D", "P-9-E", "P-9-F" and "P-17" were denied admission for failure to properly identify the exhibits.[40]

Meanwhile, respondent presented the following witnesses: (1) Mr. Ronan P. Martinez, Revenue Officer IV, Revenue District Office (RDO) No. 30 – Binondo, Manila;[41] (2) Ms. Ruth L. Urbi – Revenue Officer III, Assessment Programs Division BIR National Office;[42] and (3) Mr. Jefferson T. Ocampo – Revenue Officer II of Collection Division, Revenue Region No. 7 – Quezon City.[43]

On March 21, 2019, respondent filed his FOE.[44] In a Resolution dated April 17, 2019,[45] this Court admitted Exhibits "R-1", "R-2", "R-2-A", "R-3", "R-4", "R-4-A", "R-5", "R-6", "R-7", "R-7-A", "R-7-B", "R-8", "R-9", "R-11", "R-12", "R-13", "R-15", "R-16", "R-17", "R-17-A", "R-17-B", "R-17-C", "R-17-D", "R-17-E", "R-17-F", "R-18", "R-19", "R-20", and "R-21", subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case. In the same Resolution, this Court gave the parties thirty (30) days from receipt thereof within which to file their respective memoranda.

On May 29, 2019, respondent filed his Memorandum.[46] On the other hand, petitioner failed to file her Memorandum as per the Records Verification report issued by this Court's Judicial Records Division dated June 18, 2019.[47] Accordingly, the case was considered submitted for decision on July 15, 2019.[48]

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[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] Minutes of the Hearing dated November 19, 2018, Docket, p. 357.
[42] Minutes of the Hearing dated February 13, 2019, Docket, p. 386.
[43] Minutes of the Hearing dated March 18, 2019, Docket, p. 401.
[44] Docket, pp. 408-415.
[45] *Id.*, pp. 422-423.
[46] *Id.*, pp. 425-430.
[47] *Id.*, p. 432.
[48] *Id.*, p. 433.

THE ISSUE

Plainly stated, the issue to be resolved by this Court in the present case is whether the assessments issued by the respondent against the petitioner should be declared null and void for having been issued in violation of petitioner's right to due process and/or for having been issued beyond the prescriptive period provided by law.

THE PARTIES' ARGUMENTS

Petitioner argues that the assessment notices issued to her are null and void because the same failed to comply with the requisites of a valid assessment notice.[49] She claims that the assessment notices were issued by virtue of the authority of Kim Jacinto-Henares as Commissioner of Internal Revenue at the time when she was yet to be appointed as such.[50] Moreover, she asserts that the assessment notices are void because the same did not state the correct registered address of the petitioner.[51] In addition, the assessment notices were not issued under a valid letter of authority.[52]

Petitioner also contends that her due process rights were violated by the issuance of the subject assessment notices.[53] She maintains that the assessment notices were served to a wrong address, hence, she never received the same.[54]

Respondent, on the other hand, avers that Letter of Authority (LOA) No. LOA 2009 00017199 was issued on May 11, 2010 pursuant to Letter Notice No. 031-TRS-07-AD-00022 for the examination of petitioner's books of accounts and other accounting records for taxable year 2007.[55] Respondent also submits that the above LOA as well as all of the assessment notices were sent to petitioner's registered address and that they never violated petitioner's due process rights.[56]

[49] Docket, pp. 47-48.
[50] *Id.*, p. 48.
[51] *Id.*, pp. 48-49.
[52] *Id.*, p. 49.
[53] *Id.*, pp. 49-54.
[54] *Id.*
[55] Respondent's Memorandum, Docket, p. 427.
[56] *Id.*, pp. 427-429.

THE COURT'S RULING

After careful study of the relevant facts gathered from the case records and evidence duly presented vis-à-vis the applicable laws, regulations and jurisprudence on the matter, this Court finds that the present Petition for Review shall be dismissed for lack of jurisdiction.

The Court of Tax Appeals lacks jurisdiction to entertain the present case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[57] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action.[58] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[59] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[60]

Corollarily, it is also a settled rule that jurisdiction of a court or tribunal over the subject matter of a case is determined by the allegations in the complaint or petition, regardless of whether the plaintiff or petitioner is entitled to the relief asserted.[61]

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) and 7(a)(2) of Republic Act (RA) No. 1125, as amended, provides:

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

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[57] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015, 749 SCRA 570.
[58] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014, 718 SCRA 533 citing *Commissioner of Internal Revenue v. Villa,* 130 Phil. 3, 4 (1968).
[59] *Id.,* citing *Laresma v. Abellana,* G.R. No. 140973, November 11, 2004, 442 SCRA 156, 169.
[60] *Id.*
[61] *Alleje v. Court of Appeals,* G.R. No. 107152, January 25, 1995, 240 SCRA 495; *Sarmiento v. Court of Appeals,* G.R. No. 116192, November 16, 1995, 250 SCRA 108; *Times Broadcasting Network v. Court of Appeals,* G.R. No. 122806, June 19, 1997, 274 SCRA 366.

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

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

(2) Inaction by the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

In the exercise of its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the 1997 NIRC which prescribes the rules to be observed in the issuance of a deficiency tax assessment and in protesting the same. The said provision, in part, reads as follows:

"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 and underscoring supplied)*

Relative thereto, the *"implementing rules and regulations"* referred to in the foregoing provision is embodied by Revenue Regulations (RR) No. 12-99. Section 3 thereof lays down a detailed procedure regarding the issuance of and corresponding protest to deficiency tax assessments. Sections 3.1.4 and 3.1.5 of RR No. 12-99, in relevant part, provides:

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof).

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3.1.5 *Disputed Assessment.* — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.**

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The taxpayer shall state the facts, 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.* If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required 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, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
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> **If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period,** otherwise, the assessment shall become final, executory and demandable." *(Emphasis supplied)*

Based on the above-quoted provision, the rule is that an administrative protest against the formal letter of demand and assessment notice (FLD/FAN) shall be filed within thirty (30) days from the date of receipt thereof. Otherwise, the FLD/FAN becomes final, executory and demandable. As such, it can no longer be contested.[62] Moreover, the taxpayer must state the facts, the applicable law, rules and regulations, or jurisprudence on which the protest is based, otherwise, such protest will be considered void.

The law mandates that there must be a "disputed assessment" that is seasonably elevated to this Court for review. An assessment

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[62] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005, 447 SCRA 215.

becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level.[63] It goes without saying that the taxpayer's protest for the purpose of disputing the findings in the assessment must be validly filed, *i.e.*, compliant with the requirements of the law and regulations which include, among others, that the protest must be filed within thirty (30) days from receipt of the assessment. Section 228 of the 1997 NIRC is explicit on the requirement of filing an administrative protest within thirty (30) days from receipt of the assessment. On the other hand, Section 3.1.5 of Revenue Regulations (RR) No. 12-99, further provides that if the taxpayer fails to file a valid protest against the FLD/FAN within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable.

Logically speaking, there can be no disputed assessment without a valid protest being filed by the taxpayer to dispute the findings in the assessment. Without a disputed assessment, there can be no decision or inaction on the part of the CIR that would trigger the application of either Section 7(a)(1) or Section 7(a)(2) of RA No. 1125, as amended.

The Court notes that petitioner made the following allegations in her Petition for Review filed on September 8, 2016, to wit:[64]

> "6. In November 2015, petitioner requested for certified copy of TCT No. 184804 of the Registry of Deeds for the City of Manila. She was very much surprised to find out that a Tax Lien dated February 19, 2014 was annotated therein by authority of the respondent on May 2, 2014. She further discovered that a Notice of Levy dated June 2, 2014 was annotated therein on June 27, 2014 also by authority of the respondent. Attached herewith is a Copy of TCT No. 184804 of the Registry of Deeds for the City of Manila attached as **Annexes 'B'** to **'B-4'.**
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> 7. In a letter dated November 16, 2015, petitioner contested the levy on TCT No. 184804 and pleaded the respondent to spare the property as the same is their family home. And despite the fact that her construction business has ceased operation, petitioner offered to pay compromise in the amount of P300,000.00. The Letter was submitted to the

[63] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 & 215557, April 18, 2016, 790 SCRA 79, 96.
[64] Docket, pp. 11-12.

Bureau of Internal Revenue in December 2, 2015. A copy of the letter is hereto attached as **Annex 'C'**.

8. On the (sic) December 2, 2015, the Forfeited Assets Management Division of the BIR furnished petitioner a copy of Final Assessment Notice (F-031-LNTF-07-IT-029/F-031-LNTF-07-VT-029) dated May 27, 2011, with attached Assessment Notice No. F-031-LNTF-07-IT-029 and Assessment Notice F-031-LNTF-07-VT-029.

9. Upon scrutiny of the documents, petitioner discovered that on May 11, 2010, Elenita Quimosing Head, LN Task Force, issued Assessment Notices No. F-031-LNTF-07-IT-029 and F-031-LNTF-07-VT-029 against herein petitioner. The Assessment Notice[s] w[ere] approved by Deputy Commissioner Nelson Aspe, BIR Operations Group, allegedly upon [a]uthority of Kim S. Jacinto-Henares as Commissioner of Internal Revenue. Moreover, the Assessment Notices were issued to No. 2456 Tindalo Street, Sta. Cruz, Manila when the registered address of petitioner is at 2546 Tindalo Street, Tondo, Manila. *(See Annex 'A')*

10. Aside from the fact the assessment notices were sent to an address that is not the registered address of the petitioner, petitioner further calls the attention of the Honorable Court of Tax Appeals that in the assessment notices which were dated May 11, 2010, were allegedly approved by Kim Jacinto Henares as Commissioner of Internal Revenue, when in fact in May 11, 2010, Presidential Election was just concluded where Benigno Aquino III won and who appointed Kim Jacinto Enares as Commissioner of Internal Revenue in July 2010.

Copies of the Assessment Notices are herewith attached as Annex **'D' and 'D-1'**.

11. Further scrutiny of the documents further showed that on May 27, 2011, a **Final Notice of Assessment (F-031-LNTF-07-IT-029 / F-031-LNTF-07-VT-029)** was issued to herein petitioner but with business address at **2456 Tindalo Street, Sta. Cruz, Manila.** A copy of the Final Assessment Notice is hereto attached as **Annex 'E'** to **'E-2'**;

12. On June 13, 2016, being unaware of the legal remedies available to her, petitioner wrote a personal appeal to Asst. Commissioner Elvira R. Vera, requesting reconsideration of the taxes assessed against her citing the fact that she never

> received the alleged Letter Notice, Assessment Notices and the Final Assessment Notice because the same was (sic) sent to No. 2456 Tindalo Street, Sta. Cruz, Manila, which is not her BIR registered address which is at No. 2546 Tindalo Street, Tondo, Manila. The letter was duly received but no action was taken thereon. Attached is a copy of the Letter marked as **Annex 'F'.**
>
> 13. On September 5, 2016, petitioner again followed-up her letter appeal to Asst. Commissioner Vera. She was then furnished a Notice of Sale wherein her properties embraced in TCT No. 184804 of the Registry of Deeds for the City of Manila, and TCT No. N-27443 of the Registry of Deeds for Quezon City were schedule[d] to be sold by respondents through public auction on September 8, 2016. A copy of the Notice of Sale is hereto attached as **Annex 'G';**
>
> 14. Petitioner was then informed by the BIR that only a temporary restraining order issued by the Honorable Court of Tax Appeals can stop the auction sale. Hence, the BIR Forfeited Assets Management Team advised the petitioner to secure the services of a lawyer and to petition the Honorable Court immediately. Thus, this Petition." *(Underscoring supplied)*

It is apparent from the above allegations that the subject assessments did not become "disputed assessment" subject to this Court's appellate jurisdiction. Petitioner admitted that she received the subject assessment notices on **December 2, 2015** but it was only on **June 13, 2016**, or after the lapse of **194 days**, when she submitted her letter[65] to the BIR asking for reconsideration of the assessments. Such letter was evidently filed out of time even if this Court were to consider the same as petitioner's protest against the subject assessments.

Truth be told, the June 13, 2016 letter submitted by petitioner to the BIR cannot even be considered as a valid protest because it failed to state the facts, the applicable law, rules and regulations, and/or jurisprudence on which the protest is based as expressly required by RR No. 12-99. Petitioner merely grounded her request for reconsideration in the above letter on her purported non-receipt of the assessment notices due to the wrong address indicated therein even after she actually received these notices on December 2, 2015. On this

[65] Annex "F" of the Petition for Review, Docket, p. 36.

point, the dictum enunciated by the Supreme Court in *Sy Po v. Court of Tax Appeals*[66] is instructive:

> "Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession. Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession."

Given the foregoing, the inescapable conclusion is that petitioner's failure to protest the assessments within the 30-day period provided under Section 228 of the 1997 NIRC and Section 3 of RR No. 12-99 meant that they became final and unappeable. From then on, petitioner was barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits.[67] The presumption of correctness of the tax assessments stands. As the Supreme Court ruled in *Sy Po v. Court of Tax Appeals*:[68]

> "Tax assessments by tax 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." *(Citations omitted)*

Having found that it has no jurisdiction to take cognizance of the present case, the Court finds it unnecessary to discuss the other issues raised. *gc*

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[66] G.R. No. 81446, August 18, 1988, 164 SCRA 524 citing *Collector of Internal Revenue v. Reyes,* Nos. L-11534 and L-11558, November 25, 1958, 104 Phil. 1061 (1958) Unrep.

[67] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, April 17, 2007, 521 SCRA 373.

[68] G.R. No. L-81446, August 18, 1988, 164 SCRA 524, 530.

WHEREFORE, the present Amended Petition for Review (With Application for the [Issuance] of Writ of Preliminary Injunction and Temporary Restraining Order) is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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