REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SHIPSIDE INCORPORATED,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10709

Members:

REYES-FAJARDO, *Acting Chairperson and*
ANGELES, *JJ.*

Promulgated:

JAN 09 2026
1:00 p.m.

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DECISION

ANGELES, *J.*:

Before the Court is a *Petition for Review*[1] filed by Shipside Incorporated (petitioner) against the Commissioner of Internal Revenue (CIR) (respondent), praying that the Final Decision on Disputed Assessment (FDDA) dated February 9, 2017,[2] and the Final Decision dated November 9, 2021[3] which found petitioner liable for deficiency taxes covering Taxable Year (TY) 2010, be reversed.

PARTIES

Petitioner is a domestic corporation organized and existing under Philippine laws. Its principal place of business is located at the 20th floor, Lepanto Building, 8747 Paseo de Roxas, Makati City. It also holds office at Poro Point, San Fernando City, La Union. Petitioner was organized to engage in the hauling, shipping, warehousing, storage and handling services of copper concentrates for its parent company, Lepanto Consolidated Mining Company. It may be served processes of this Court at its counsel's address at 21st Floor, BA Lepanto Building, 8747 Paseo de Roxas, Makati City.[4]

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[1] Docket – Vol. 1, pp. 290 to 308.
[2] Exhibit "P-8," Docket – Vol. 2, pp. 690 to 693; Exhibit "R-10," BIR Records, pp. 1379 to 1382.
[3] Exhibit "P-18," USB (Exhibit "P-13-b"); Exhibit "R-12," BIR Records, pp. 1420 to 1430.
[4] *Petitioner's Memorandum*, Docket – Vol. 2, p. 756.

Respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority and power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as amended (Tax Code), and its implementing rules and regulations, and other laws and rules enforced by the Bureau of Internal Revenue (BIR).[5]

ANTECEDENT FACTS

On February 16, 2012, respondent, through Revenue Regional Director (RRD) Nestor S. Valeroso of Revenue Region No. 8 – Makati City, issued Letter of Authority (LOA) 050-2012-00000044 with Serial No. eLA201000078086,[6] authorizing Revenue Officer (RO) Ricaredo Balderas and Group Supervisor (GS) Rebecca Bailon to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2010. The LOA was accompanied by a Checklist of Requirements dated February 16, 2012.[7]

Petitioner received LOA 050-2012-00000044 and the accompanying Checklist of Requirements on February 17, 2012.[8]

On February 28, 2012, petitioner received the *First Notice*[9] requesting petitioner to present the accounting records listed in the Checklist of Requirements.

On March 15, 2012, RO Balderas issued the *Second Request for Presentation of Books of Accounts*[10] reiterating his request for petitioner to present its books of accounts and other accounting records.

On July 4, 2012, Revenue District Officer (RDO) Ricardo B. Espiritu issued a *Final Notice Before Issuance of Subpoena Duces Tecum*[11] advising petitioner that a *subpoena duces tecum* would be issued should it continue to fail to present its records. Petitioner received the same on July 6, 2012.[12]

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[5] Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues*, Docket, p. 448.
[6] Exhibit "P- 3," Docket – Vol. 2, p. 656; Exhibit "R-1," BIR Records, p. 800.
[7] Exhibit "R-2," BIR Records, p. 801.
[8] Exhibit "R-1," BIR Records, p. 800.
[9] Exhibit "R-3," BIR Records, p. 802.
[10] Exhibit "R-4," BIR Records, p. 803.
[11] Exhibit "R-5," BIR Records, p. 804.
[12] Exhibit "R-5," BIR Records, p. 804.

Thereafter, on June 11, 2013, petitioner received the Notice of Informal Conference (NIC) dated May 15, 2013.[13]

On November 29, 2013, petitioner received the Preliminary Assessment Notice (PAN) dated November 27, 2013,[14] together with Details of Discrepancies (DOD), which found petitioner liable for alleged deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT), in the aggregate amount of Php5,725,646.72, including interest.

On December 12, 2013, petitioner filed its Reply to the PAN.[15] On the same date, petitioner, through its treasurer, Ma. Loudes B. Tuason, executed a *Waiver of the Statute of Limitation Under the National Internal Revenue Code*,[16] extending respondent's period to assess until December 31, 2014.

Subsequently, on August 19, 2014, petitioner received the Formal Assessment Notice (FAN) dated August 15, 2014,[17] with attached DOD, which adjusted petitioner's alleged deficiency IT, VAT, and EWT to Php6,220,960.50, inclusive of interest.

Petitioner filed a Request for Reinvestigation of the FAN on September 17, 2014.[18]

On February 9, 2017, RRD Glen A. Geraldino issued the Final Decision on Disputed Assessment (FDDA),[19] with DOD, modifying petitioner's alleged deficiency IT, VAT, and EWT to Php7,785,109.32, inclusive of interest and surcharges.

Thereafter, on March 14, 2017, petitioner filed a Request for Reconsideration of the FDDA dated February 9, 2017.[20] In the said request, petitioner stated that it received the FDDA on February 9, 2017.

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[13] Exhibit "R-6," BIR Records, p. 1161.
[14] Exhibit "P-4," Docket – Vol. 2, pp. 658 to 662; Exhibit "R-7," BIR Records, pp. 1283 to 1287.
[15] Exhibit "P-5," Docket – Vol. 2, pp. 663 to 672.
[16] Exhibit "P-16," USB (Exhibit "P-13-b").
[17] Exhibit "P-6," Docket – Vol.2, pp. 673 to 677; Exhibit "R-9," BIR Records, pp. 1341 to 1345.
[18] Exhibit "P-7," Docket – Vol. 2, pp. 682 to 693.
[19] Exhibit "P-8," Docket – Vol. 2, pp. 690 to 693; Exhibit "R-10," BIR Records, pp. 1379 to 1382.
[20] Exhibit "P-9," Docket – Vol. 2, pp. 694 to 703; Exhibit "R-11," BIR Records, pp. 1393 to 1402.

On May 31, 2017, petitioner submitted a Letter of Apology dated May 29, 2017,[21] clarifying that it had actually received the FDDA on February 14, 2017 and that its earlier statement of receipt on February 9, 2017 was erroneous.

On November 9, 2021, respondent issued a Decision[22] denying petitioner's Request for Reconsideration and affirming the FDDA dated February 9, 2017. Petitioner received the same on November 17, 2021.[23]

PROCEEDINGS BEFORE THIS COURT

On December 17, 2021, petitioner filed its *Petition for Review*.[24] The Petition, however, failed to include the names of the intended witnesses and the summaries of their respective testimonies, as required under Section 6(a) and (b), Rule 7 of the Rules of Court.

Thus, in the Resolution dated February 16, 2022,[25] the Court directed petitioner to comply with the said requirements within ten (10) days from receipt.

On March 14, 2022, petitioner filed its *Compliance and Motion to Admit Amended Petition for Review*,[26] attaching a Petition for Review and supporting documents,[27] together with the Judicial Affidavit of Atty. Ma. Belina B. Mariano.[28]

In the Resolution dated March 23, 2022,[29] the Court noted that: (1) the attached Petition for Review was not denominated as an Amended Petition for Review; and (2) the *jurat* in Judicial Affidavit of Atty. Ma. Belina B. Mariano did not comply with the 2004 Rules on Notarial Practice because it failed to state the details of her competent evidence of identity.

In the same Resolution,[30] the Court ordered petitioner to take appropriate action relative to the Court's observations within ten (10) days from receipt.

[21] Exhibit "P-10," Docket – Vol. 2, p. 704.
[22] Exhibit "P-18," USB (Exhibit "P-13-b"); Exhibit "R-12," BIR Records, pp. 1420 to 1430.
[23] Exhibit "P-18," USB (Exhibit "P-13-b").
[24] Docket – Vol. 1, pp. 6 to 22.
[25] Docket – Vol. 1, pp. 253 to 254.
[26] Docket – Vol. 1, pp. 273 to 278.
[27] Docket – Vol. 1, pp. 255 to 272.
[28] Docket – Vol. 1, pp. 278 to 283.
[29] Docket – Vol. 1, pp. 287 to 288.
[30] Docket – Vol. 1, pp. 287 to 288.

On April 11, 2022, petitioner filed its *Compliance*[31] attaching an *Amended Petition for Review*[32] and a corrected *Judicial Affidavit* of Atty. Ma. Belina B. Mariano.[33]

On April 21, 2022, the Court issued a Resolution[34] noting petitioner's *Compliance*[35] and admitting the *Amended Petition for Review*[36] and its attachments. In the same Resolution,[37] summons was issued to respondent.

Thereafter, on June 6, 2022, respondent posted his *Motion for Extension of Time to File Answer*.[38]

In the Resolution dated June 20, 2022,[39] the Court granted respondent's *Motion for Extension of Time to File Answer*.

The case was transferred to the Second Division on June 30, 2022.[40]

On July 6, 2022, respondent posted his *Answer (With Motion to Hear/Resolve Respondent's Affirmative Defenses)*[41] interposing special and affirmative defenses.

On July 12, 2022, the Court issued a Notice of Pre-Trial Conference.[42] On the same date, respondent filed his *Compliance*[43] transmitting the BIR records of the case.

On September 2, 2022, both parties filed their respective Pre-Trial Briefs.[44] The Pre-Trial Conference was thereafter conducted on November 17, 2022.

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[31] *Id.*, pp. 289 to 291.
[32] *Id.*, pp. 290 to 308.
[33] *Id.*, pp. 309 to 314.
[34] *Id.*, pp. 318 to 319.
[35] *Supra* note 31.
[36] *Supra* note 32.
[37] *Supra* note 34.
[38] Docket – Vol. 1, pp. 322 to 324.
[39] *Id.*, p. 327.
[40] *Id.*, p. 328.
[41] *Answer (With Motion to Hear/Resolve Respondent's Affirmative Defenses)*, Docket – Vol. 1, pp. 329 to 358.
[42] Docket – Vol. 1, pp. 427 to 428.
[43] Docket – Vol. 1, p. 429.
[44] Docket – Vol. 1, pp. 431 to 438.

Meanwhile, on September 22, 2022, petitioner filed its *Comment/Opposition (to the Respondent's Special and Affirmative Defenses).*[45]

In the Resolution dated November 7, 2022,[46] the Court denied respondent's *Motion to Hear/Resolve Respondent's Affirmative Defenses* incorporated in his *Answer*.

On November 29, 2022, petitioner filed its *Motion to Commission an Independent Certified Public Accountant (ICPA).*[47]

The Court issued the Pre-Trial Order on February 23, 2023.[48]

On April 5, 2023, the Philippine Mediation Center Unit – Court of Tax Appeals (PMCU-CTA) informed the Court that the parties decided not to have their case mediated by the PMCU-CTA.[49] The same was noted by the Court in the Resolution dated April 18, 2023.[50]

Thereafter, on May 29, 2023, the case was transferred to the Third Division.[51]

On July 6, 2023, petitioner filed a *Motion to Substitute a Witness and Admit Attached Judicial Affidavit of the Substitute (From Atty. Ma. Belina B. Mariano to Ms. Ma. Lourdes B. Tuason).*[52]

Trial ensued, during which the parties presented their respective testimonial and documentary evidence.

Petitioner presented the testimonies of Ms. Ma. Lourdes B. Tuason, its Treasurer,[53] and Ms. Rose Marie S. Nacpil, the Court-commissioned ICPA.[54]

The ICPA Report was submitted on December 18, 2023.[55]

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[45] *Id.*, pp. 446 to 450.
[46] *Id.*, pp. 452 to 467.
[47] *Id.*, pp. 476 to 482.
[48] Pre-Trial Order, Docket – Vol. 1, p. 492 to 496.
[49] Docket – Vol. 1, p. 497.
[50] *Id.*, p. 500
[51] Docket – Vol. 2, p. 501.
[52] *Id.*, pp. 505 to 507.
[53] Exhibit "P-12," Docket – Vol. 2, pp. 508 to 516; Minutes of the hearing held on, and Order dated, October 17, 2023, Docket – Vol. 2, pp. 581 and 585 to 586, respectively.
[54] *Oath of Commission* dated October 17, 2023, Docket – Vol. 2, p. 584; Minutes of the hearing held on, and Order dated January 18, 2024, Docket – Vol. 2, pp. 632 and 633 to 634, respectively.
[55] Exhibit "P-13," Docket – Vol. 2, pp. 594 to 616.

On February 2, 2024, petitioner filed its *Formal Offer of Evidence* (FOE).[56] Respondent filed his *Comment/Opposition to Petitioner's Formal Offer of Evidence*[57] raising objections to the admissibility of petitioner's evidence. Petitioner's FOE was then submitted for resolution.

The Court admitted all of petitioner's exhibits except Exhibit "P-19" in the Resolution dated May 8, 2024.[58]

On May 23, 2024, respondent presented RO Ralph Carlo Dela Cruz who testified by way of *Judicial Affidavit* dated July 6, 2022.[59]

On June 7, 2024, respondent filed his *Formal Offer of Evidence*,[60] to which petitioner filed its Comment and Opposition.[61] Respondent's FOE was thereafter submitted for resolution.

In the Resolution dated August 29, 2024,[62] the Court admitted all of respondent's exhibits.

On October 15, 2024, petitioner filed its *Memorandum*.[63] Respondent filed his *Memorandum*[64] on October 28, 2024.

Thereafter, on November 15, 2024, the Court issued a Minute Resolution[65] submitting the case for decision.

THE ISSUE

As stipulated by the parties, the following issues are submitted for the Court's resolution:[66]

I. Whether petitioner is liable for the alleged deficiency Income Tax, Value Added Tax, and Expanded Withholding Tax in the aggregate amount of Php7,785,109.32 for taxable year 2010;

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[56] Docket – Vol. 2, pp. 635 to 639.
[57] *Id.*, pp. 706 to 716.
[58] *Id.*, pp. 723 to 724.
[59] Exhibit "R-13," Docket – Vol. 1, pp. 359 to 370.
[60] Docket – Vol. 2, pp. 728 to 734.
[61] *Id.*, pp. 736 to 738.
[62] *Id.*, pp. 749 to 750.
[63] *Id.*, pp. 756 to 779.
[64] *Id.*, pp. 781 to 805.
[65] *Id.*, p. 809.
[66] *Stipulation of Issue*, Pre-Trial Order, Docket – Vol. 1, p. 493.

II. Whether respondent's right to assess and collect the alleged tax deficiencies has already prescribed; and

III. Whether petitioner's right to due process has been violated.

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner maintains that respondent's right to assess petitioner for alleged deficiency taxes has already prescribed. It contends that under Section 203 of the Tax Code, respondent has only three (3) years within which to assess internal revenue taxes. Petitioner asserts that respondent failed to establish that the ten (10)-year prescriptive period under Section 222 of the Tax Code applies in the present case. Thus, the three (3)-year prescriptive period to assess applies. Consequently, petitioner argues that respondent's right to assess petitioner for TY 2010 has already prescribed. Petitioner likewise contends that respondent's right to collect the alleged deficiency taxes for TY 2010 has also prescribed.[67]

Petitioner further argues that respondent failed to present the RO named in the LOA. It thus posits that the PAN, FAN, and FDDA constitute hearsay and should not be admitted. Petitioner adds that respondent did not present the Memoranda recommending the issuance of the PAN, FAN, and FDDA, and therefore failed to prove that these issuances were properly recommended by the RO authorized under the LOA.[68]

Petitioner also alleges that its right to due process was violated. It claims that the FAN and FDDA did not consider the matters raised by petitioner in its Reply to PAN and Request for Reconsideration. It likewise highlights that the NIC incorrectly stated the taxable year under audit. Petitioner asserts that the assessments lacked sufficient factual and legal basis, rendering the tax assessments void for being issued in violation of due process.[69]

Respondent's arguments

Respondent counters that the Court does not have jurisdiction over the case. He asserts that petitioner admitted receiving the FDDA on February 9, 2017, as stated in its Request for Reconsideration dated

[67] *Petitioner's Memorandum*, Docket – Vol. 2, pp. 759 to 764.
[68] *Id.*, pp. 764 to 766.
[69] *Petitioner's Memorandum*, Docket – Vol. 2, pp. 766 to 776.

March 13, 2017. Under Section 3.1.4 of Revenue Regulation (RR) No. 12-99, as amended, petitioner had thirty (30) days from February 9, 2017, or until March 10, 2017, within which to file a Request for Reconsideration. Since petitioner filed its Request for Reconsideration only on March 14, 2017, respondent argues that the same was filed out of time, rendering the assessment final, executory, and demandable. As such, it ceased to be a disputed assessment, thereby removing the case from the jurisdiction of the Court.[70]

Respondent additionally maintains that the deficiency tax assessments issued against petitioner for TY 2010 are supported by factual and legal basis. He asserts that the assessments were retained in the FAN and FDDA because petitioner allegedly failed to submit adequate documents to substantiate its claims. Respondent underscores that tax assessments enjoy a presumption of correctness, and it is the taxpayer who bears the burden of disproving them. In respondent's view, petitioner failed to present sufficient evidence to overturn the findings on alleged deficiency IT, EWT, and VAT.[71]

Respondent further contends that the ten-(10) year prescriptive period to assess under Section 222 of the Tax Code applies in the present case. He claims that there is *prima facie* evidence of a false or fraudulent return alleging that petitioner failed to report sales, receipts, and income by an amount exceeding thirty percent (30%) of what was declared in its return. Therefore, respondent asserts that his right to assess petitioner for deficiency taxes has not yet prescribed.[72]

RULING OF THE COURT

The *Petition for Review* is dismissed.

The CTA has no jurisdiction over the present appeal.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, vests in the Court of Tax Appeals exclusive appellate jurisdiction over decisions of the CIR, to wit:

> SEC. 7. Jurisdiction – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[70] *Respondent's Memorandum*, Docket – Vol. 2, pp. 784 to 786.
[71] *Id.*, pp. 786 to 798.
[72] *Id.*, pp. 799 to 801.

> (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)

Correlatively, Section 11 of RA No. 1125, as amended, provides that a taxpayer adversely affected by the CIR's decision, ruling, or inaction has thirty (30) days from receipt thereof or the expiration of the period within which appeal to the CTA:

> 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.**
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*. (Emphasis supplied)

However, when a taxpayer files a petition for review before the CTA without validly contesting the assessment with the CIR, the appeal is premature and the Court of Tax Appeals has no jurisdiction.[73]

Section 228 of the Tax Code provides for the manner to protest an assessment, 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:

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[73] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 239464, May 10, 2021.

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** (Emphasis supplied)

Likewise, Section 3.1.4 of RR No. 12-99, as amended, expressly provides that when the protest is denied by the CIR's authorized representative, the taxpayer has the option to either appeal to the CTA or to file a request for reconsideration to the CIR, within thirty (30) days from the date of receipt of the decision:

> 3.1.4 **Disputed Assessment.** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> xxx xxx xxx
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either**: (i) **appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision**; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized

> representative shall be entertained by the Commissioner. (Emphasis supplied)

In this case, records show that petitioner received the FAN on August 19, 2014.[74] Accordingly, under Section 228 of the Tax Code, petitioner had thirty (30) days from receipt, or until September 18, 2014, within which to file its protest. On September 17, 2014, petitioner filed a Request for Reinvestigation of the FAN dated August 15, 2014.[75] Thus, petitioner's protest was filed on time.

Subsequently, on February 9, 2017, RRD Glen A. Geraldino issued the FDDA.[76] Thereafter, on March 14, 2017, petitioner filed a Request for Reconsideration of the FDDA dated February 9, 2017.[77] However, petitioner's date of receipt of the FDDA remains in contention.

Petitioner alleges that it received the FDDA on February 14, 2017, not February 9, 2017. To support this claim, petitioner presented the following evidence:

1. A copy of the FDDA dated February 9, 2017 bearing the handwritten annotation "RECEIVED 2/14/17 ABON, A.;"[78]
2. An apology letter dated May 29, 2017 which petitioner submitted to respondent, stating that petitioner erroneously stated in its Request for Reconsideration dated March 14, 2017 that it received the FDDA on February 9, 2017, and clarifying that the actual date of receipt was February 14, 2017;[79] and
3. The Amended Judicial Affidavit of petitioner's treasurer, Ms. Ma. Lourdes B. Tuason.[80]

On the other hand, to support his position that petitioner received the FDDA on February 9, 2017, respondent presented:

1. Petitioner's Request for Reconsideration dated March 14, 2017[81] where petitioner admitted that it received the FDDA on February 9, 2017;

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[74] Exhibit "P-6," Docket – Vol.2, pp. 673 to 677; Exhibit "R-9," BIR Records, pp. 1341 to 1345.
[75] Exhibit "P-7," Docket – Vol. 2, pp. 682 to 693.
[76] Exhibit "P-8," Docket – Vol. 2, pp. 690 to 693; Exhibit "R-10," BIR Records, pp. 1379 to 1382.
[77] Exhibit "P-9," Docket – Vol. 2, pp. 694 to 703; Exhibit "R-11," BIR Records, pp. 1393 to 1402.
[78] Exhibit "P-8," Docket – Vol. 2, pp. 690 to 693.
[79] Exhibit "P-10," Docket – Vol. 2, p. 704.
[80] Exhibit "P-12," Docket – Vol. 2, pp. 508 to 516.
[81] Exhibit "R-11," BIR Records, pp. 1393 to 1402.

2. Respondent's Decision dated November 9, 2021[82] denying petitioner's Request for Consideration, which likewise considered February 9, 2017 as the date of receipt.

After weighing the evidence, the Court rules that petitioner failed to prove that the date of receipt of the FDDA is February 14, 2017.

Section 22, Rule 130 of the Rules of Court provides that a witness can testify only to those facts which he or she knows of his or her personal knowledge; that is, which are derived from his or her own perception.

In *Mancol Jr. v. Development Bank of the Philippines*,[83] the Supreme Court emphasized that:

> It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, i.e., those which are derived from his own perception. A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements.
>
> **The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because his testimony derives its value not from the credit accorded to him as a witness presently testifying but from the veracity and competency of the extrajudicial source of his information.** (Emphasis supplied)

In the present case, Ms. Tuason, petitioner's treasurer, narrated in her Judicial Affidavit petitioner's receipt of the FDDA, as follows:

> Q35: After the Company filed its Administrative Protest with the BIR, what happened next if any?
>
> A35: **On 14 February 2017, the Company received the FDDA denying our Protest and proposing for the payment of a higher amount of P7,785,109.32.** (Emphasis supplied)
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> xxx xxx xxx

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[82] Exhibit "R-12," BIR Records, pp. 1420 to 1430.
[83] G.R. No. 204289, November 22, 2017.

> Q38: What action did the Company take, if any, after it received the FDDA?
>
> A38: The company filed a Request for Reconsideration before the Commissioner of Internal Revenue on 14 March 2017. In the said request however, the company made a mistake in stating that the date it received the FDDA was 09 February 2017. **The truth is that, we received the FDDA on 14 February 2017 which is the date when an auditor from BIR Revenue Region No. 8 personally served a copy of the FDDA on Shipside's office in Makati. Nevertheless, we were able to correct this by filing a Letter of Apology on 31 May 2017 before the Office of the Commissioner of Internal Revenue.** (Emphasis supplied)

It bears emphasis that the person who actually received the FDDA was not Ms. Tuason but a certain "Abon, A." Notably, Ms. Tuason did not state in her Judicial Affidavit that she personally witnessed "Abon, A." receive the FDDA on February 14, 2017, nor did she claim any direct participation in the receipt of the FDDA. Thus, Ms. Tuason lacks personal knowledge to testify as to the date of receipt of the FDDA. Consequently, her assertion that the FDDA was received on February 14, 2017 is hearsay.

More importantly, the handwritten annotation "Abon, A." was not authenticated during trial as required under Section 22, Rule 132 of the Rules of Court.[84] Absent proper authentication, said notation cannot be relied upon to establish the date of receipt thereof.

Furthermore, during clarificatory questioning by the Court, Ms. Tuason admitted that, aside from the apology letter stating that petitioner received the FDDA on February 14, 2017, petitioner did not submit evidence to prove that the FDDA was received on that date, thus:[85]

> JUSTICE MANAHAN:
>
> Just a clarification, Ms. Tuason. You made mention in your Letter of Apology that the date that you mentioned in your Request for Reconsideration was an erroneous one, what is the proof of receipt, what is the evidence of the date that you actually received it?

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[84] RULE 132 PRESENTATION OF EVIDENCE
SEC. 22. *How genuineness of handwriting proved.* – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he or she has seen the person write, or has seen writing purporting to be his or hers upon which the witness has acted or has been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

[85] Transcript of Stenographic Notes, October 17, 2023, p. 18.

A:

It was another an acknowledgment on the document.

xxx xxx xxx

JUSTICE MANAHAN:

Ms. Tuason, because your answer in Question No. 38 that you made in stating that you received the FDDA on February 9 when in fact you received it February 14, so I am asking is what is the empirical support of your statement that the date you received this February 14 instead of February 9, if it was personally received by your company. Does our court record show a stamp receipt by Shipside?

Clerk of Court:

There is no stamp, Your Honors, but there's a small note on the bottom. Handwritten only.

JUSTICE MANAHAN:

What does it say? Is there an Abon A. in your company?

A:

He was an accountant in the company.

It is axiomatic that under the Rules on Evidence a party who alleges a fact has the burden of proving it.[86] A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.[87] The basic rule is that mere allegation is not evidence and is not equivalent to proof.[88]

While Ms. Tuason alleged that on February 14, 2017, an auditor from BIR Revenue Region No. 8 personally served a copy of the FDDA at Shipside's office in Makati, petitioner failed to present evidence substantiating this claim. Absent such evidence, Ms. Tuason's assertion that petitioner received the FDDA on February 14, 2017 remains a mere self-serving allegation and cannot prevail over petitioner's own written admission that it received the FDDA on February 9, 2017.

Section 1, Rule 133 of the Rules of Court provides that:

RULE 133
Weight and Sufficiency of Evidence

Section 1. Preponderance of evidence, how determined. — In civil cases, the party having the burden of proof must establish his or her case by a preponderance of

[86] *Spouses Ramos v. Obispo*, G.R. No. 193804, February 27, 2013.
[87] *Id.*
[88] *ECE Realty and Development, Inc. v. Mandap*, G.R. No. 196182, September 1, 2014.

> **evidence.** In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis supplied)

In *Encinas v. National Bookstore, Inc.*,[89] the Supreme Court explained that:

> "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

In this case, petitioner was not able to sufficiently prove by documentary and testimonial evidence that it received the FDDA on February 14, 2017, instead of February 9, 2017, the date petitioner itself stated in its Request for Reconsideration of the FDDA. Notably, the Request for Reconsideration was filed on March 14, 2017, [90] whereas the Letter of Apology[91] correcting the alleged date of receipt was filed only on May 31, 2017, more than two (2) months later. If at all, such letter appears to be a mere afterthought on the part of petitioner.

During cross-examination, Ms. Tuason was unable to satisfactorily explain this significant lapse of time:[92]

Atty. Laguesma:	Thank you, Ms. Witness. So, after the reinvestigation, a Final Decision on Disputed Assessment was issued resolving your request for reinvestigation, correct?
Witness:	Yes.
Atty. Laguesma:	So, from there you were able to file a Motion or an Appeal for Reconsideration or Request for Reconsideration before the Commissioner, correct?
Witness:	On March 14.

[89] G.R. No. 162704, November 19, 2004.
[90] Exhibit "P-9," Docket – Vol. 2, pp. 694 to 703; Exhibit "R-11," BIR Records, pp. 1393 to 1402.
[91] Exhibit "P-10," Docket – Vol. 2, p. 704.
[92] Transcript of Stenographic Notes, October 17, 2023, pp. 14 to 16.

Atty. Laguesma:	Thank you. And in your first letter requesting for reconsideration before the office of the Commissioner of Internal Revenue, you mentioned that you received the FDDA on February 9, 2017, correct?
Witness:	Yes, but there was a correction.
Atty. Laguesma:	Yes or no.
Witness:	Yes.
Atty. Laguesma:	However, in your second letter, you mentioned that you inadvertently stated the wrong receipt, correct?
Witness:	Yes.
Atty. Laguesma:	So, Ms. Witness, may I ask if [sic] when did you file the Request for Reconsideration before the Commissioner?
Witness:	March 14, 2017.
Atty. Laguesma:	And when did you file you supplemental or you letter of apology that you mentioned?
Witness:	Is it May of the same year.
Atty. Laguesma:	It took you two months to notice that you stated the wrong receipt date of the FDDA before filing a correction letter, correct?
Witness:	March...(inaudible).

All told, petitioner failed to prove by a preponderance of evidence that it received the FDDA on February 14, 2017. The greater weight of credible evidence supports the conclusion that petitioner received the FDDA on February 9, 2017, as it originally admitted in its Request for Reconsideration.[93]

Given the foregoing, petitioner had thirty (30) days from receipt of the FDDA, or until March 10, 2017, within which to file its Request for Reconsideration with respondent, pursuant to Section 3.1.4 of RR No. 12-99, as amended. In this case, petitioner filed its Request for Reconsideration of the FDDA only on March 14, 2017.[94] Accordingly, the same was filed out of time.

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[93] Exhibit "P-9," Docket – Vol. 2, pp. 694 to 703; Exhibit "R-11," BIR Records, pp. 1393 to 1402.
[94] *Id.*

It bears reiterating that Section 7(a)(1) of RA No. 1125, as amended, confers upon the CTA jurisdiction only over decisions of the CIR in cases **involving disputed assessments**. Once an assessment becomes final, executory, and demandable by reason of the taxpayer's failure to seasonably avail of administrative or judicial remedies, it can no longer be considered a "disputed assessment" within the jurisdiction of the CTA.

Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. Only a statute can confer jurisdiction on courts and administrative agencies.[95] When a case is filed with a court which has no jurisdiction over the action, the court shall motu proprio dismiss the case.[96]

A perusal of the FDDA dated February 9, 2017[97] shows that petitioner was informed that the assessment will become final, executory, and demandable if petitioner does not appeal to the respondent or the CTA within thirty (30) days from receipt. Since petitioner failed to file a timely Request for Reconsideration, the FDDA and the assessment became final, executory, and demandable.

Accordingly, the assessment can no longer be considered a disputed assessment. Having already become final, executory, and demandable, it falls outside the appellate jurisdiction of the Court. The Court, therefore, has no jurisdiction over the present appeal.

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED.**

SO ORDERED.

HENRY S. ANGELES
Associate Justice

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[95] *Fernandez v. Fulgueras*, G.R. No. 178575, June 29, 2010.
[96] *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014.
[97] Exhibit "P-8," Docket – Vol. 2, pp. 690 to 693; Exhibit "R-10," BIR Records, pp. 1379 to 1382.

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice
Third Division Acting 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's Division.

MA. BELEN RINGPIS-LIBAN
Presiding Justice