REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

KILUSANG MAGKAIBIGAN MULTI-PURPOSE COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8751

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 17 2016
10:00 a.m.

x---x

DECISION

RINGPIS-LIBAN, *J.*:

This Petition for Review filed by Kilusang Magkaibigan Multi-Purpose Cooperative seeks to reverse the denial of its protest through a Preliminary Collection Letter dated November 20, 2013 issued by the Commissioner of Internal Revenue, and prays that the assessment for deficiency income tax, value-added tax (VAT), and withholding tax covering calendar year (CY) 2006 in the aggregate amount of ₱11,074,437.74 be declared void.[1]

THE FACTS

Petitioner Kilusang Magkaibigan Multi-Purpose Cooperative is a cooperative registered in accordance with the provisions of Republic Act (R.A.) Nos. 6938 and 9520, as evidenced by its Certificate of Registration No. RN-7801-DVO[2] dated March 22, 2004 and Certificate of Registration No. 9520-11001570[3] dated November 3, 2009. It is formed primarily to engage in the vertical and horizontal construction as well as rental of equipment subject to

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[1] Summary of the Case, Pre-Trial Order, docket, vol. 2, p. 781.
[2] Exhibit "P-1", docket, vol. 1, p. 312.
[3] Pars. 2.1 and 2.2, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 2, pp. 766 to 767.

government rules and regulations, and to engage in the buy and sell of hardware and construction materials, office supplies, equipment and basic commodities to members and non-members.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.

On September 25, 2007, respondent issued Letter of Authority LOA 2007 00004042 which petitioner received on October 2, 2007, authorizing the examination of the latter's books of accounts and other accounting records for all internal revenue tax liabilities covering the period of January 1, 2006 to December 31, 2006.[5] Respondent likewise requested petitioner to submit pertinent documents.[6] After the investigation, petitioner was found to have deficiency taxes; thus, respondent gave petitioner a Notice for Informal Conference[7] dated June 18, 2008.

On November 10, 2008, Letter of Authority LOA 2001 00060046 was issued due to the findings of the Regional Tax Fraud Committee (RTFC) of Revenue Region No. 19-Davao City that a prima facie evidence of tax fraud existed based on the alleged under-declaration of petitioner's income by more than thirty percent (30%) for CY 2006.[8]

On September 7, 2010, respondent issued a Preliminary Assessment Notice[9] (PAN) with Details of Discrepancies[10] assessing petitioner for alleged deficiency income tax, value-added tax, withholding tax, and documentary stamp tax (DST) for calendar year 2006, detailed as follows:[11]

Gross Income/Revenues per Investigation	₱10,421,555.26
Tax Due	3,647,544.34
Less: Tax Withheld per return	-
Deficiency Income Tax	3647,544.34
Add: Surcharge	1,823,772.17
Interest	1,094,263.30
Compromise penalty	-
TOTAL AMOUNT DUE	**₱ 6,565,579.81**

[4] Exhibit "P-18", docket, vol. 1, p. 369.
[5] Exhibit "R-1", BIR records, p. 6.
[6] Exhibits "R-2", "R-3", and "R-4", BIR records, p. 7, 8, and 9, respectively.
[7] Exhibit "R-7", BIR records, p. 101.
[8] Exhibits "R-10" and "R-11", BIR records, pp. 130 to 132.
[9] Exhibit "P-5", docket, vol. 1, p. 70; Exhibit "R-15", BIR records, p. 172.
[10] Exhibit "P-5-a", docket, vol. 1, p. 71.
[11] Par. 3, JSFI, docket, vol. 2, p. 767.

Output Tax Due	2,504,174.38
Less: Creditable Input Tax per return	-
Value-added Tax Due	2,504,174.38
Less: Tax withheld per Return	-
Deficiency Valued-added Tax	2,504,174.38
Add: Surcharge	1,252,087.19
Interest	751,252.31
Compromise penalty	-
TOTAL AMOUNT DUE	₱ 4,507,513.88
Tax Due	8,075.00
Less: Withholding Tax Paid	-
Deficiency Withholding Tax	8,075.00
Add: Surcharge	4,037.50
Interest	5,159.93
Compromise penalty	-
TOTAL AMOUNT DUE	₱ 17,272.43
Tax Due	31,159.69
Less: Tax Paid	-
Deficiency Documentary Stamp Tax	31,159.69
Add: Surcharge	15,579.85
Interest	20,035.68
Compromise penalty	-
TOTAL AMOUNT DUE	₱ 66,775.22

Consequently, petitioner disputed the PAN through a letter dated October 1, 2010 and received by respondent on October 5, 2010.[12] However, petitioner agreed in the said letter to pay the deficiency documentary stamp tax and expressed that the withholding tax amounting to ₱15,928.38 had already been paid.[13] In response to the aforementioned letter, respondent informed petitioner that its protest on income tax and VAT needed further evaluation.[14]

Thereafter, on November 21, 2011, respondent released a Formal Letter of Demand[15] (FLD) with Details of Discrepancy[16] and Assessment Notices[17], assessing petitioner of deficiency income tax, VAT, and withholding tax for CY 2006, to wit:[18]

Gross Income/Revenues per Investigation	₱10,421,555.26
Tax Due	3,647,544.34
Less: Tax Withheld per return	-
Deficiency Income Tax	3,647,544.34
Add: Surcharge	1,823,772.17

[12] Exhibits "P-6" and "P-6-a", docket, vol. 1, pp. 322 to 323; Exhibit "R-16", BIR records, pp. 187 to 188.
[13] *Ibid.*
[14] Exhibit "P-8", docket, vol. 1, p. 325.
[15] Exhibit "P-9", docket, vol. 1, p. 75; Exhibit "R-17", BIR records, p. 206.
[16] Exhibit "P-9-a", docket, vol. 1, p. 76.
[17] Exhibits "P-9-b", "P-9-b-1", and "P-9-b-2", docket, vol. 1, pp. 77, 78, and 79, respectively.
[18] Par. 4, JSFI, docket, vol. 2, p. 767.

Interest	1,094,263.30
Compromise penalty	-
TOTAL AMOUNT DUE	₱ 6,565,579.81
Output Tax Due	2,504,174.38
Less: Creditable Input Tax per return	-
Value-added Tax Due	2,504,174.38
Less: Tax withheld per Return	-
Deficiency Valued-added Tax	2,504,174.38
Add: Surcharge	1,252,087.19
Interest	751,252.31
Compromise penalty	-
TOTAL AMOUNT DUE	₱ 4,507,513.88
Tax Due	8,075.00
Less: Withholding Tax Paid	-
Deficiency Withholding Tax	8,075.00
Add: Surcharge	4,037.50
Interest	5,159.93
Compromise penalty	-
Amount Due	17,272.43
Less: Payment made on 11-04-08 at Land Bank	15,928.38
TOTAL AMOUNT DUE	₱ 1,344.05

Petitioner then sent a letter dated March 26, 2012 and received by respondent on March 27, 2012, disputing the subject assessment notices.[19]

On July 10, 2012, petitioner was informed through a letter that its tax exemption privileges as a cooperative under R.A. No. 9520 has been revoked by respondent on July 2, 2012.[20] Thereafter, petitioner appealed the said revocation by respondent before the Revenue Operations Group and the Office of the Secretary of the Department of Finance.[21]

On November 20, 2013, respondent sent a Preliminary Collection Letter for petitioner's deficiency income tax, VAT, and withholding tax in the total amount of ₱11,074,437.74.[22] Petitioner replied to the said collection letter through a letter on November 29, 2013.[23] However, respondent issued a letter dated December 6, 2013, stating that the assessment had become final and executory.[24]

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[19] Par. 5, JSFI, docket, vol. 2, p. 767; Exhibits "P-10", "P-10-a", and "P-10-b", docket, vol. 1, pp. 326 to 327.

[20] Exhibits "P-11" and "P-11-a", docket, vol. 1, pp. 328 to 329.

[21] Exhibits "P-12" and "P-12-a", docket, vol. 1, p. 330 and pp. 331 to 347, respectively.

[22] Par. 6, JSFI, docket, vol. 2, p. 767; Exhibit "P-13", docket, vol. 1, p. 57.

[23] Par. 7, JSFI, docket, vol. 2, p. 767; Exhibit "P-14", docket, vol. 1, pp. 349 to 351.

[24] Par. 8, JSFI, docket, vol. 2, p. 767; Exhibit "P-14-a", docket, vol. 1, p. 352.

Respondent issued a Final Notice Before Seizure on December 12, 2013.[25]

Thus, petitioner filed this Petition for Review through registered mail on December 20, 2013 and received by the Court on December 26, 2013[26], incorporating therein an Application for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction.

The Court received respondent's Opposition to Petitioner's Application for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction with Motion to Dismiss on February 13, 2014. Then, petitioner submitted its Reply (To Respondent's Opposition to Petitioner's Application for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction) with Opposition (To Respondent's Motion to Dismiss) on February 20, 2014.

On March 19, 2014, the Court denied respondent's Motion to Dismiss and granted the latter's Motion for an Extension of Time within which to File Answer[27] and Second Motion for Extension of time within which to File Answer[28] that were filed on February 5, 2014 and on March 10, 2014, respectively.[29]

To support its application for suspension of collection of taxes, petitioner presented Mr. Eduardo O. Gumban and Engr. Henry B. Sabate as its witnesses, and formally offered its documentary exhibits which were later admitted by the Court.[30]

On the other hand, respondent's counsel manifested that respondent would not be presenting any witness with respect to the suspension of collection of taxes.

In the Answer[31] filed via registered mail on April 10, 2014 and received by the Court on April 21, 2014, respondent interposed the following special and affirmative defenses:

> "4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

[25] Par. 9, JSFI, docket, vol. 2, p. 768; Exhibit "P-16", docket, vol. 1, p. 357.
[26] Docket, vol. 1, pp. 7 to 28.
[27] Docket, vol. 1, pp. 199 to 202.
[28] Docket, vol. 1, pp. 385 to 388.
[29] Resolution, docket, vol. 1, pp. 394 to 399.
[30] Resolution, docket, vol. 1, pp. 407 to 408.
[31] Docket, vol. 1, pp. 424 to 433.

THE FORMAL ASSESSMENT NOTICE HAS BECOME FINAL EXECUTORY AND DEMANDABLE BRINGING IT BEYOND THE JURISDICTION OF THIS HONORABLE COURT.

5. The instant petition is not warranted for lack of jurisdiction as respondent's assessment has become final, executory and demandable.

6. Per BIR Records for the instant case, the following antecedent facts are worthy to note:

a) A *Formal Letter of Demand with attached Assessment Notices and Details of Discrepancy* dated **November 21, 2011** was issued against the petitioner for deficiency income, value added and withholding taxes for calendar year 2006;

b) Petitioner sent a *Letter* dated **January 4, 2012**, body of which is hereafter quoted for easy reference:

> 'This is in connection with the notice issued from your office. We would like to request for reinvestigation or extension of 30 days regarding this matter. Our bookkeeper resigned from office thus we are still verifying and reconciling the records. x x x x'

c) Through a letter dated January 24, 2012, petitioner was given up to February 4, 2012 within which to submit evidence to support its claim;

d) The alleged petitioner's protest through a *Letter* dated March 26, 2012 was received by respondent on **March 27, 2012**;

7. Respondent submits that the **January 4, 2012 Letter** did not toll the prescriptive period to protest since it did not conform to the Revenue Regulations No. 12-85 dated November 27, 1985.

8. Revenue Regulations 12-85 accordingly provides:

'PROTEST TO ASSESSMENT

SECTION 6. Protest. – The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:

(a) Name of the taxpayer and address for the immediate past three (3) taxable year.

(b) Nature of request whether reinvestigation or reconsideration specifying newly discovered evidence he intends to present if it is a request for investigation.

(c) The taxable periods covered.

(d) Assessment number.

(e) Date of receipt of assessment notice or letter of demand.

(f) Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon the filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.

(g) The itemized schedule of the adjustments with which the taxpayer does not agree.

(h) A statement of facts and/or law in support of the protest.

A request for reconsideration or reinvestigation of an assessment shall be accompanied by a waiver of the Statute of Limitations in favor of the government. For the purpose of the protest herein –

(a) Request for reconsideration – refers to a plea of re-evaluation of the assessment on the basis of

> existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (b) Request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both.'

9. Even assuming that respondent is estopped by its letter-reply dated January 24, 2012, still petitioner belatedly filed its protest against the *Formal Letter of Demand* issued against them, per reference to the BIR Records.

10. It is thus clear that petitioner failed to protest administratively the aforementioned *Formal Letter of Demand with Assessment Notices* within thirty (30) days from the date of receipt as mandated by Section 228 of the National Internal Revenue Code (NIRC) which provides:

> ***SEC. 228. Protesting of Assessment.*** –
>
> *x x x x*
>
> *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.*
>
> *x x x x*

11. In connection thereto, Revenue Regulations 12-99 accordingly provides:

> '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**.' (Emphasis ours)

12. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only

means that the validity or correctness of the assessment may no longer be questioned on appeal. Consequently, the instant petition should not be given due course. The Honorable Court cannot take cognizance of the instant petition considering that it is a court of special jurisdiction and can only take cognizance of matters as are clearly within its jurisdiction.

13. Section 9 of Republic Act 9282, amending RA 1125 reads:

> 'SECTION 9. Section 11 of the same Act is hereby amended to read as follows:
>
> '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. (Emphasis supplied)
>
> x x x'

14. Section 7(a)(1) in relation to Section 9 of Republic Act 9282, further provides:

> 'SECTION 7. Section 7 of the same Act is hereby amended to read as follows:
>
> 'Sec. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue

> or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds 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 of action, in which case the inaction shall be deemed a denial
>
> x x x x'

15. It is thus clear, that respondent's **decision or inaction** is needed before the Honorable Court's jurisdiction may be sought for. In the case of petitioner, there is either **no decision or inaction** which petitioner may appeal before the Honorable Court due to the **absence of a <u>valid</u> protest**.

16. Petitioner can neither argue that the *Preliminary Collection Letter* ('PCL', for brevity) dated November 21, 2011 should be considered as respondent's **decision** on its alleged protest, since the tenor of the PCL did not even refer to a valid protest having been filed before respondent, thus:

> 'Our records show that we sent you an assessment notice dated November 21, 2011, for the collection of your internal revenue tax liability/ies described hereunder which remains unpaid to date x x x x'

17. With the assessment having become final, executory and demandable, respondent's administrative remedy for collection of taxes is also inevitably warranted.

THE PERIOD TO ASSESS THE DEFICIENCY TAXES HAS NOT PRESCRIBED.

RESPONDENT CAN VALIDLY ASSESS AND COLLECT FROM PETITIONER IN THE AMOUNT OF ELEVEN

MILLION, SEVENTY-FOUR THOUSAND, FOUR HUNDRED THIRTY-SEVEN AND 74/100 PESOS (PHP11,074,437.74) FOR TAXABLE YEAR 2006.

18. Due to the intimacy and interdependence of the foregoing two points, respondent respectfully requests leave of this Honorable Court to argue them together.

19. A Letter of Authority No. 00004042 dated September 25, 2007 was issued against petitioner, authorizing Revenue Officer Sheila Joy C. Benedicto of Revenue District 113, supervised by Romeo T. Moscoso, to examine its books of accounts and other accounting records for all internal revenue tax liabilities for the period from January 1, 2006 to December 31, 2006.

20. In a Memorandum dated September 9, 2008, it was stated that:

> 'The investigation conducted by the District Office resulted to a proposed assessment of Php16,141,547.28 representing income, value added, documentary stamp, and withholding taxes. The income and value added tax deficiencies were primarily based on the underdeclaration of income by Php21,602,599.81 which is more than 30% of the reported income per return of only Php1,769,694.34. Since the initial findings by the investigating officer disclosed an existence of fraud in this case, this docket is hereby recommended to be referred to Special Investigation Division.'

21. Through *Resolution Approving Fraud Examination* dated October 30, 2008, issuance of a Letter of Authority for the fraud examination of petitioner's books and records for the year 2006 was approved.

22. Thus, a *Letter of Authority No. 00060046 dated November 10, 2008* was issued authorizing Revenue Officer Zaida P. Ditiangquin ('RO Ditiangquin) and Intelligence Officer Lilanie B. Morada ('IO Morada) of the Special Investigation Division to examine petitioner's books of accounts and other accounting

records for all internal revenue taxes for the period from January 1, 2006 to December 31, 2006.

23. Hence, this involves an assessment under Section 222(a) of the National Internal Revenue Code (NIRC), pertinent part of which is:

> **'SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.**
>
> In the case of a **false or fraudulent** return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years** after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. x x x x' (Emphasis supplied)

24. Since the subject case involves taxable year **2006**, and the *Formal Letter of Demand with Assessment Notices* was issued on November 21, **2011**, it is well to conclude that the assessment was made within the ten (10)-year period prescribed by Section 222(a) of the NIRC.

25. Petitioner, however, contends that 'it was exempt from paying the assessed taxes, thus, it could not have acted on a mistaken understanding of the law or the facts in order to render the return it filed a false one, let alone be motivated by any fraudulent intent to evade paying the correct taxes.'

26. However, per the findings of RO Ditiangquin and IO Morada, it was found out that petitioner's primary purposes for which it was formed were not among *(sic)* included in the list of purposes outlined in Article 6 of Republic Act No. 6938 (Cooperative Code of the Philippines), hence, it is subject to all internal revenue taxes.

27. Furthermore, the said findings states that the Financial Statements in 2006 showed that petitioner has no adequate construction equipments *(sic)* necessary to undertake construction contracts, hence, cost of construction is done by a sub-contractor,

this is evident that the cooperative lacks self-reliance which is significant value among the state policies in promoting cooperatives (Art. 2, R.A. 6938).

28. Consequently, this basis was stated in the *Formal Letter of Demand with Assessment Notices* issued against petitioner, wherein its Details of Discrepancy provides:

> 23.1 INCOME TAX: Php6,565,579.81 – Evaluation of 2006 audited financial statements disclosed that the cooperative have *(sic)* no adequate construction equipments *(sic)* necessary to undertake construction contracts, hence, cost of construction is done by a subcontractor. This is evident that the cooperative lacks self-reliance, which is significant value among the state policies in promoting cooperatives, (Art. 2 RA 6938). With this basis, the 35% corporate income tax was imposed on the net surplus per return and gross profit margin equivalent to 48.08% on the unreported gross income amounting to Php19,098,425.44.
>
> 23.2 VALUE ADDED TAX: Php4,507,513.88 – Represents value added tax inclusive of penalty on the total revenue exclusive of VAT component amounting to Php20,868,119.80.

29. Based on all of the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. It is a well-settled principle that:

> '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.'

Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

On June 16, 2014, the Court granted petitioner's motion to suspend the collection of taxes provided that petitioner would file the required surety bond.[32] Accordingly, petitioner submitted the surety bond on July 9, 2014,[33] which the Court noted on July 21, 2014.[34]

On August 26, 2014, the Court granted the Motion to Admit Attached Joint Stipulation of Facts and Issues[35] filed on August 8, 2014; hence, the belatedly filed Joint Stipulation of Facts and Issues[36] was admitted.[37] Subsequently, the Court issued a Pre-Trial Order[38] on September 8, 2014, adopting the parties' stipulations and terminating the pre-trial.

On October 1, 2014, the Court received petitioner's Motion to Amend Pre-Trial Order[39], which the Court granted on December 9, 2014.[40]

During trial, petitioner presented Ms. Nova Sixteen Malaki, Ms. Rhey Christine Q. Angcos, Mr. Eduardo O. Gumban, and Engr. Henry B. Sabate as its witnesses. Thereafter, petitioner formally offered its documentary evidence consisting of Exhibits "P-1" to "P-24-a", inclusive of submarkings; which the Court admitted, except for Exhibit "P-15-b".[41]

On the other hand, respondent presented Revenue Officers Sheila Joy C. Benedicto and Marilou E. Cubero as witnesses. Then, respondent formally offered his documentary evidence composed of Exhibits "R-1" to "R-23", which were later all admitted by the Court,[42] except for Exhibit "R-23".[43]

Due to the absence of petitioner's counsel despite notice, petitioner's presentation of rebuttal evidence was deemed waived.[44]

The Court declared the case submitted for decision on December 4, 2015,[45] after the filing of petitioner's Memorandum *Ad Cautelam*[46] on October 7, 2015 and respondent's Memorandum[47] on November 6, 2015.

[32] Resolution, docket, vol. 2, pp. 718 to 727.
[33] Docket, vol. 2, pp. 735 to 759.
[34] Docket, vol. 2, p. 760.
[35] Docket, vol. 2, pp. 762 to 764.
[36] Docket, vol. 2, pp. 766 to 775.
[37] Docket, vol. 2, p. 777.
[38] Docket, vol. 2, pp. 781 to 789.
[39] Docket, vol. 2, pp. 799 to 804.
[40] Resolution, docket, vol. 2, pp. 831 to 832.
[41] Resolution dated March 30, 2015, docket, vol. 2, pp. 867 to 868.
[42] Resolution dated September 7, 2015, docket, vol. 2, p. 913.
[43] Resolution dated November 26, 2015, docket, vol. 2, pp. 999 to 1001.
[44] Resolution dated September 15, 2015, docket, vol. 2, pp. 925 to 926.
[45] Resolution, docket, vol. 2, p. 1003.
[46] Docket, vol. 2, pp. 944 to 977.
[47] Docket, vol. 2, pp. 989 to 996.

THE ISSUES

The parties interposed the following issues [48] for this Court's consideration:

1. Whether this Court has jurisdiction over the instant case; and

2. Whether petitioner is liable for the deficiency taxes for 2006 as assessed in the Formal Letter of Demand and Assessment Notices dated November 21, 2011.

THE RULING OF THE COURT

Respondent contends that the Court has no jurisdiction over the subject assessment. According to respondent, petitioner belatedly protested the Final Assessment Notice, making it final and executory. Thus, petitioner can no longer dispute the correctness of the FAN.

On the other hand, petitioner posits that the FAN is void for being issued beyond the three-year prescriptive period. Petitioner asserts that the alleged failure to timely protest the FAN could not cure the FAN's substantial defect.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "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

[48] Issues, JSFI, docket, vol. 2, p. 768.

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."

In relation thereto is Section 203 of the NIRC of 1997, as amended, which states:

"SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

The Court takes guidance from the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.* [49], wherein the Supreme Court held that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code or related laws administered by the Bureau of Internal Revenue, *viz*:

"Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing

[49] G.R. No. 169225, November 17, 2010.

Protector's Services, Inc. v. Court of Appeals, the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide 'other matters' related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over 'other matters,' it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term 'other matters' referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

> Section 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise 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 imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).

xxx xxx xxx

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term 'other matters' over which the CTA has appellate jurisdiction.

Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over 'other matters' arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an 'other matter' must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, **the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**" *(Emphasis supplied)*

Corollary thereto is the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[50], wherein the Supreme Court deemed a return filed before the last day prescribed by law for the filing thereof as filed on such last day for purposes of Section 222 of the NIRC of 1997, as amended, to wit:

[50] G.R. No. 192173, July 29, 2015.

"At the outset, the period for petitioner to assess and collect an internal revenue tax is limited only to three years by Section 203 of the NIRC of 1997, as amended, quoted hereunder as follows:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.**
>
> For purposes of this Section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.** (Emphasis supplied)

This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."

In the present case, petitioner's Annual Income Tax Return for calendar year 2006 was filed on March 8, 2007.[51]

Based on the foregoing, respondent had three years from April 15, 2007[52] or until April 15, 2010 within which to assess petitioner's tax liability. However, the FAN was issued only on November 21, 2011.

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[51] Exhibits "P-15" and "P-15-a", docket, vol. 1, p. 353.

[52] SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax*. – xxx.

(B) *Time of Filing the Income Tax Return*. – xxx The final adjustment return shall be filed on or before the fifteenth (15) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. (Section 77[B] of the NIRC of 1997, as amended).

Apparently, the right of respondent to assess petitioner of its tax liability has prescribed, and the FAN was issued beyond the three-year prescriptive period provided by law.

It is noteworthy that respondent issued a second Letter of Authority to authorize another examination of petitioner's books of accounts and other accounting records for the period covering January 1, 2006 to December 31, 2006 due to the findings of the Regional Tax Fraud Committee of Revenue Region No. 19-Davao City of tax fraud due to the purported under-declaration of petitioner's income by more than 30% for CY 2006.[53]

Likewise, respondent alleges in the Answer that the ten-year prescriptive period in assessing petitioner's tax liability applies in petitioner's case. Petitioner has allegedly under-declared its income tax by more than 30% of the reported income per return.[54]

However, petitioner insists that it is exempt from paying income tax under the provisions of R.A. Nos. 6938 and 9520.

Section 222(a) of the NIRC of 1997, as amended, provides:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

At this juncture, the Court is confronted with the factual issue of whether there was indeed under-declaration of reported income of more than 30% by petitioner to determine whether the prescriptive period of three years or ten years should be applied. Accordingly, it is imperative also to determine whether petitioner, as a registered cooperative, enjoys tax exemption.

Respondent's evaluation of petitioner's 2006 Audited Financial Statements disclosed that the latter has no adequate construction equipment necessary to undertake construction contracts. Thus, respondent presumed that

[53] Exhibits "R-10" and "R-11", BIR records, pp. 130 to 132.
[54] Docket, vol. 1, pp. 417 to 418.

the cost of construction was assumed by a subcontractor.[55] As a consequence, respondent assessed petitioner of deficiency income tax in the amount of ₱6,565,579.81 on the gross income per audit amounting to ₱23,372,294.15, computed as follows:[56]

Total gross income per audit	₱23,372,294.15
Less: Output tax	2,504,174.37
Gross income per IT return filed	1,769,694.34
Unreported gross income	19,098,425.44
Less: cost of sales	9,182,522.95
Unreported gross profit	9,915,902.49
Add: Net surplus per return	505,652.77
Gross Income/Revenues per Investigation	10,421,555.26
Tax Due	3,647,544.34
Less: Tax Withheld per return	-
Deficiency Income Tax	3,647,544.34
Add: Surcharge	1,823,772.17
Interest	1,094,263.30
Compromise penalty	-
TOTAL AMOUNT DUE	₱ 6,565,579.81

In the Protest Letter dated October 1, 2010, petitioner explained that "the cooperative gets only 4% to 6% of the projects implemented by the cooperative xxx. The projects are assigned to the members and it is the members who supervise and implement the project xxx. Definitely, no outsiders are implementing the projects."[57] To prove its claim, petitioner attached a schedule of its total collection and income for calendar year 2006.[58]

Petitioner also asserts that it is tax-exempt under the provisions of R.A. No. 6938.

Articles 61 and 62(1) of the R.A. No. 6938 provide:

> "ARTICLE 61. *Tax Treatment of Cooperatives.* – Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any government taxes and fees imposed under the internal revenue laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section.
>
> ARTICLE 62. *Tax and Other Exemptions.* – Cooperatives transacting business with both members and nonmembers shall not be subject to tax on their transactions to members.

[55] Exhibit "P-9-a", docket, vol. 1, p. 76.
[56] Exhibit "P-9", docket, vol. 1, p. 75; Exhibit "R-17", BIR records, p. 206; BIR records, p. 139.
[57] Exhibit "R-16", BIR records, pp. 187 to 186.
[58] BIR records, pp. 183 to 185.

Notwithstanding the provisions of any or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:

(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or *barangay* taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or duties thereon."

Pertinent thereto is Section 3 of Revenue Regulations (RR) No. 20-2001, implementing Articles 61 and 62 of R.A. No. 6938, to wit:

"SECTION 3. *Exemption From Taxes.* –

3.1 Duly registered cooperatives dealing/transacting business with members only shall be exempt from paying the following taxes for which they are directly liable, viz:

a. Income Tax on income from operations;

b. Value-Added Tax (VAT) under Section 109 pars. (r), (s), (t) and (u) of the Tax Code of 1997;

xxx xxx xxx

3.2 Taxability/Exemption of duly registered cooperatives dealing/transacting business with both members and non-members:

I. For cooperatives with accumulated reserves and undivided net savings of not more than Ten Million Pesos (P10,000,000.00)

a. Exemption from all national internal revenue taxes for which they are directly liable, as enumerated under Sec. 3.1 of these Regulations."

It is clear from the foregoing that a registered cooperative is tax-exempt when it deals or transacts business with members. However, if a registered cooperative has transacted business with non-members, it is still tax exempt when the said cooperative has accumulated reserves and undivided net savings of not more than ten million pesos.

Petitioner thus presented its Certificate of Registration No. RN-7801-DVO[59], BIR RDA-RR Ruling No. 19-Ruling No. 84-04[60], Board Resolution No. 05-001-C[61], 2006 Statements of Financial Condition[62], and its Articles of Cooperation[63] to prove that it is a duly registered cooperative in accordance with the provisions of R.A. No. 6938 and is exempted from paying income tax.

Petitioner likewise has prohibited subcontracting in its projects.[64] As such, petitioner has been dealing or transacting with its members to implement petitioner's projects, and has not engaged subcontractors for the project's implementation. Thus, petitioner's income derived from the transaction with its members is tax-exempt pursuant to the provisions of R.A. No. 6938 and RR No. 20-2001.

After a careful evaluation of the evidence presented by petitioner, the Court finds the above-mentioned documents sufficient to prove that petitioner is tax-exempt on its operations.

Even assuming for the sake of argument that petitioner has transacted with non-members, the same is still exempted from paying income tax because it only has ₱293,421.12 reserves[65], which is less than the required ten million pesos (P10,000,000.00) of accumulated reserves and undivided net savings in accordance with the afore-mentioned law and implementing rules and regulation.

[59] Exhibit "P-1", docket, vol. 1, p. 312.
[60] Exhibit "P-3", docket, vol. 1, p. 314.
[61] Exhibit "P-7", docket, vol. 1, p. 324.
[62] Docket, vol. 1, p. 354; BIR records, p. 48.
[63] Exhibit "P-18", docket, vol. 1, pp. 369 to 377.
[64] Exhibit "P-7", docket, vol. 1, p. 324.
[65] 2006 Statements of Financial Conditions, docket, vol. 1, p. 354; BIR records, p. 48.

Based on the foregoing, petitioner has no under-declared income tax. Therefore, the ten-year prescriptive period as exception to the statute of limitations does not apply in this case.

In the case of *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.* [66], the High Tribunal ruled that the statute of limitations on the collection of taxes primarily benefits the taxpayer, and that the legal provisions on prescription should be liberally construed to protect taxpayers and the exceptions to the rule on prescription should be strictly construed, to wit:

> "It bears stressing that, in a number of cases, this Court has explained that the statute of limitations on the collection of taxes primarily benefits the taxpayer. In these cases, the Court exemplified the detrimental effects that the delay in the assessment and collection of taxes inflicts upon the taxpayers. Thus, in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, this Court echoed Justice Montemayor's disquisition in his dissenting opinion in *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*, regarding the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made, thus:
>
>> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court xxx. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is

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[66] G.R. No. 198677, November 26, 2014.

in the meantime accumulating interest which the taxpayer eventually has to pay.

Likewise, in *Republic of the Philippines v. Ablaza*, this Court elucidated that the prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment. Also, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, it was held that the statute of limitations on the assessment and collection of taxes is principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, this Court ruled that the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed."

Considering the foregoing, the subject assessment has been issued beyond the three-year prescriptive period; thus, the same is void.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Preliminary Collection Letter dated November 20, 2013, and the Formal Letter of Demand and Final Assessment Notices dated November 21, 2011 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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.

ROMAN G. DEL ROSARIO
Presiding Justice