REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JG SUMMIT HOLDINGS, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* No. 2397
(CTA Case No.9147)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 04 2023 11:35a.m.

x- -x

DECISION

MANAHAN, *J.:*

Before the Court *En Banc* is a *Petition for Review* filed by JG Summit Holdings, Inc., on January 18, 2021,[1] which seeks to reverse and set aside the Decision dated March 12, 2020,[2] and the Resolution dated December 11, 2020,[3] both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9147 entitled, "*JG Summit Holdings, Inc. vs. Commissioner of Internal Revenue.*"

We quote the dispositive portions of the assailed Decision dated March 12, 2020 and the assailed Resolution dated December 11, 2020, as follows:

Decision dated March 12, 2020:

"**WHEREFORE**, the foregoing considered, petitioner's

[1] EB Docket, pp. 8-48.
[2] EB Docket, pp. 55-71.
[3] EB Docket, pp. 72-97.

Amended Petition for Review dated 22 October 2015 is **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Resolution dated December 11, 2020:

"**WHEREFORE**, petitioner's Motion for Reconsideration dated 17 June 2020 is hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner JG Summit Holdings, Inc. (JGSHI) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at the 43rd floor, Robinsons Tower, ADB Avenue corner Poveda Road, Ortigas Center, Brgy, San Antonio, Pasig City.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed 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 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. His principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes of this Court.

THE FACTS

The facts, as found by the Court in Division,[4] are as follows:

"On May 14, 2010, respondent issued Letter of Authority (LOA) No. LOA-127-2010-00000012, authorizing Revenue Officers (ROs) Ma. Salud Maddela, Allan Maniego, Myrna Ramirez, Joel Aguila, Zenaida Paz, Cletofel Parungao, and Group Supervisor (GS) Glorializa Samoy to examine petitioner's books and records.

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[4] In the Original Decision dated March 12, 2020.

Thereafter, petitioner executed a Waiver of the Defense of Prescription (WDP/first WDP) on 02 April 2012 extending the respondent's right to assess petitioner until 31 December 2012. Petitioner executed another WDP (second WDP) on 07 December 2012, extending the period of assessment until 31 December 2013.

On 16 January 2013, petitioner received a copy of the Notice of Informal Conference (NIC) with the BIR finding petitioner liable for deficiency IT, VAT, DST, withholding tax on compensation (WTC), expanded withholding tax (EWT), final withholding tax (FWT) on dividends, and improperly accumulated earnings tax (IAET) in the aggregate amount of FIVE BILLION FORTY-TWO MILLION NINETY-ONE THOUSAND SEVEN HUNDRED NINETY-SEVEN PESOS AND NINETEEN CENTAVOS (₱5,042,091,797.19)

Still thereafter, on 09 October 2013, petitioner executed yet another WDP (third WDP) extending the respondent's right to assess until 30 June 2014, which respondent accepted on 12 December 2013. In the meantime, on 04 November 2013, petitioner received a Preliminary Assessment Notice (PAN) adjusting its tax liabilities to FIVE BILLION EIGHT HUNDRED FORTY MILLION ONE HUNDRED EIGHTY THOUSAND NINE HUNDRED FIFTY-SEVEN PESOS AND TWENTY THREE CENTAVOS (₱5,840,180,957.23).

On 27 February 2014, petitioner received a copy of respondent's Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) signed by CIR Kim Jacinto Henares (CIR Henares), finding petitioner liable for deficiency taxes, inclusive of increments amounting to SIX BILLION ONE MILLION SEVENTY-FIVE THOUSAND FORTY-SIX PESOS AND FOURTEEN CENTAVOS (₱6,001,075,046.14).

On 12 March 2014, petitioner filed its protest to the FLD with a request for investigation. On 05 December 2014, petitioner received respondent's Final Decision on Disputed Assessment (FDDA), reiterating the latter's previous findings and now holding petitioner liable for tax liabilities including increments in the amount of SIX BILLION FIVE HUNDRED FORTY-SIX MILLION TWO HUNDRED SIX THOUSAND SEVEN HUNDRED SIXTY-THREE PESOS AND THIRTY-TWO CENTAVOS (₱6,546,206,763.32).

On 22 December 2014, petitioner filed a request for reconsideration with respondent CIR. On 20 August 2015, respondent denied petitioner's request through the assailed RFDDA, wherein petitioner was still held liable for deficiency IT, VAT, DST and IAET. However, respondent acknowledged petitioner's payment in *interim* of its deficiency WTC, EWT and FWT.

Aggrieved by respondent's actions, petitioner appealed

its case before this Court *via* the present Petition for Review, filed on 18 September 2015.

On March 12, 2020, the Court in Division rendered a Decision dismissing the Petition for Review for lack of jurisdiction.

Aggrieved by the dismissal of its Petition for Review, petitioner filed a Motion for Reconsideration on June 17, 2020 which, as earlier mentioned, was denied by the Court on December 11, 2020.

On December 29, 2020, petitioner filed a Motion for Extension of Time (To file Petition for Review) which was granted by the Court in a Minute Resolution dated January 5, 2021 extending the period to file the Petition for Review on or before January 17, 2021.

On January 18, 2021,[5] petitioner filed the instant Petition for Review with Urgent Motion to Suspend Collection of Taxes.

On February 10, 2021, the Court issued a Resolution ordering respondent to file his comment to the Petition for Review within ten (10) days from notice.

On February 26, 2021, respondent filed his Comment.[6]

On March 16, 2021, the Court referred the case for mediation to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for initial appearance.

On June 30, 2021, the parties executed a No Agreement to Mediate after having decided not to have the case mediated by the PMC-CTA.

On November 11, 2021, the Court issued a Resolution[7] granting respondent's motion for additional time to return the BIR Records after temporarily requesting for their withdrawal for the processing of petitioner's application for a compromise settlement. In the same Resolution, the Court ordered both parties to file a Joint Progress Report on the status of the administrative compromise settlement and for respondent to

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[5] January 17, 2021 fell on a Sunday.
[6] EB Docket, pp. 295-301.
[7] EB Docket, pp. 324 to 325.

return the BIR Records of the case within ten (10) days from notice.

After several requests for extensions of time to return the BIR Records to the Court, respondent finally filed a Manifestation and Compliance with Profuse Apologies on June 30, 2022, returning the BIR Records he withdrew and prayed that it be considered sufficient compliance with the orders of the Court.

On July 26, 2022, the Court issued a Resolution considering the transmittal of the BIR Records as sufficient compliance with the Court's Resolution dated June 21, 2022.

On August 10, 2022, petitioner filed a Manifestation expressing its observation that the Letter of Authority (LOA) included in the recently returned BIR Records shows that it does not indicate the name of the revenue officer who actively participated in the subject audit investigation, thus, rendering void the subsequently issued Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) for taxable year 2009 because they emanated without any legal authority.

On September 9, 2022, the Court issued a Resolution taking note of petitioner's Manifestation, but without further action because the same argument was already raised in its Petition for Review filed with the Court *En Banc* on January 18, 2021. The Court, in the same Resolution, reiterated that the above-captioned case is deemed submitted for decision on July 26, 2022.

THE ISSUES

The Assignment of Errors raised by the petitioner in its Petition for Review are quoted as follows:

A.

The Honorable Second Division gravely erred in considering the Petition for Review to have been filed out of time and dismissing the same on the ground of lack of jurisdiction.

B.

The Honorable Second Division gravely erred in disregarding the fatal defects apparent from the face of the FLD, FDDA and the RFDDA and the absence of an electronic Letter of Authority that automatically render the disputed assessments against petitioner null and void.

C.

The Honorable Second Division gravely erred in declaring that respondent's right to assess petitioner for the year 2009 has not yet prescribed.

D.

The Honorable Second Division gravely erred in not cancelling the disputed assessments for having been issued without legal and factual bases.

Petitioner's Arguments

By way of reiteration of the arguments propounded in its Motion for Reconsideration filed with the Court in Division, petitioner insists that it is the Revised Final Decision on Disputed Assessment (RFDDA) that should have been considered as the final decision of respondent appealable to the Court within thirty (30) days from receipt. Petitioner contends that the original Final Decision on Disputed Assessment (FDDA) was superseded by the RFDDA as evident from the wordings of the latter which clearly gives it an option to "appeal this final decision to the Court of Tax Appeal *(sic)* or to the Commissioner of Internal Revenue" through a request for reconsideration within thirty (30) days from date of receipt. Citing the ruling of the Court of Tax Appeals (CTA) in the case of *Capitol Steel Corporation vs. CIR,*[8] petitioner markedly expresses that a revised FDDA supersedes the original FDDA and that the RFDDA may still be protested through a request for reconsideration with the CIR or appeal the same to the CTA within 30 days from its receipt of the RFDDA. It narrates that it received the RFDDA on August 20, 2015 and filed a Petition for Review with the Court on September 18, 2015 which is well within the 30-day period to file an appeal pursuant to Section 228 of the 1997 NIRC, as amended. With the attendant

[8] CTA Resolution dated February 7, 2018 in CTA Case No. 9240.

circumstances and the clear wordings of the RFDDA and signed by the then CIR Henares, petitioner believes that the Court in Division erred in dismissing the case for lack of jurisdiction

Petitioner also enumerates the following alleged defects of the subject FLD, FDDA and the RFFDA making them void and without any effect, to wit:

1. The FLD did not provide a definite amount of tax liability;
2. The FDDA and the RFDDA failed to state a definite due date for payment of the assessments; and,
3. There is no electronic LOA issued to support the audit investigation that resulted in the assessment.

Petitioner further challenges the validity of the deficiency assessments on the ground of prescription contending that the Waiver of the Statute of Limitations (waiver) did not strictly conform with the requirements prescribed in Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 which accordingly renders the assessments void as they were issued beyond the period provided by law.

Petitioner asserts that tax collection in the face of the apparent defects of the FLD, FDDA and RFDDA amounts to a deprivation of property without due process of law.

Respondent's Counter-Arguments

Respondent maintains that the Court in Division has no jurisdiction over the Petition for Review as it was filed beyond the 30-day period from receipt of the FDDA citing Section 228 of the 1997 NIRC, as amended. Since petitioner's protest to the FLD was denied by the CIR through the issuance of the FDDA, respondent states that an appeal should have been filed with the Court within 30 days from notice, otherwise, the FLD/FANs are rendered final, executory and demandable. Assuming that the FDDA was received by petitioner on December 5, 2014, respondent opines that petitioner had until January 4, 2015 within which to elevate an appeal with the Court and records show that the Petition for Review was filed only with the Court on September 18, 2015. Respondent further argues that the filing of a request for reconsideration with the CIR from the denial of the protest does not toll the 30-day period to appeal to this Court.

Citing the case of *RCBC vs. CIR*,[9] respondent claims that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

THE COURT *EN BANC*'S RULING

We proceed to resolve the issue of jurisdiction as this takes precedence over all the other issues raised in this case. As held by the Supreme Court in the case of *Bernadette S. Bilag, et.al. vs. Estela Ay-Ay, et.al.,*[10] jurisdiction is a primordial issue that must be passed upon by a court before any other issue is adjudicated upon, thus:

> "Jurisprudence has consistently held that jurisdiction is defined as the power and authority of a court to hear, try and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. xxx xxx **Thus when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action**. xxx xxx" *(emphasis supplied)*

The controversy on the issue of jurisdiction stems from the existence of two (2) supposed "final decisions" rendered by respondent CIR; one is the original FDDA received by petitioner on December 5, 2014,[11] and the second one is the RFDDA,[12] received by petitioner on August 20, 2015. Petitioner insists that the clear wordings of the RFDDA providing for an option to appeal this decision to the Court of Tax Appeals signifies that the same is the CIR's "final decision" appealable to the Court. Petitioner argues that it is not prohibited by law or regulation to correct the findings embodied in the FDDA and it would then be contrary to the interest of justice to hold it liable for deficiency taxes based on an FDDA which respondent endeavored to revise and correct. Petitioner maintains its theory that the RFDDA was intended and described by the then CIR, Kim Jacinto-Henares, to be her final decision appealable to the CTA, hence, it was an appropriate move to file a Petition for Review with this Court on the basis of this document.

We find petitioner's arguments without merit.

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[9] G.R. No. 168498, April 24, 2007.
[10] G.R. No. 189950, April 24, 2017.
[11] Exhibit "P-13", Division Docket, Volume III, pp. 1960-1970.
[12] Exhibit "P-18", Division Docket, Volume III, pp. 1115-1124.

Jurisdiction is conferred by law. It cannot be waived by stipulation, by abdication or by estoppel.[13] The CTA, as a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[14]

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the Court's jurisdiction, thus:

"Section 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 Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides for a specific period for action, in which case the inaction shall be deemed a denial" *(emphasis supplied)*

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), further provides as follows:

"Rule 4

xxx xxx xxx

Sec.3. *Cases within the jurisdiction of the Court in Division.* –

The Court in Division shall exercise:

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

(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

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[13] *Republic of the Philippines vs. Maria Lourdes P.A. Sereno*, G.R. No. 237428, May 11, 2018.
[14] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014.

> National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx"

Section 11 of RA No. 1125, as amended by RA No. 9282, gives a party a period of thirty (30) days from receipt of the assailed decision within which to file an appeal with the Court, and we quote as follows:

> Section 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**." *(emphases supplied)*

Instructive is the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[15] and we quote:

> "It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. **The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case**. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law." *(emphasis supplied).*

On its face, petitioner's contention would have been a logical and reasonable path were it not for the plain and clear provisions of the law and its implementing regulations.

An intensive analysis of the facts of the case leads this Court to conclude that petitioner availed of the wrong remedy when it filed an administrative appeal after receiving the FDDA denying its protest. Truly, there is nothing in the law that

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[15] G.R. No. 167606, August 11, 2010.

prohibits petitioner from filing a motion for reconsideration but such extended exercise of exhaustion of administrative remedies does not toll the running of the 30-day period to appeal the original FDDA of the respondent with the CTA.

Section 3.1.5 of Revenue Regulations No. 12-99 as amended by RR 18-2013, provides for the option to file an administrative appeal to the CIR when the decision on the protest is issued by the CIR's *duly authorized representative.* We quote the relevant portions of the aforesaid Section 3.1.5 (iii), to wit:

> "Section 3.1.5. Disputed Assessment. –
>
> xxx xxxxxx
>
> 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 CTA within thirty (30) days from date of receipt of the said decision; or
> (ii) Elevate his protest through a 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." *(emphases supplied)*

It is quite plain to see that the two options provided by the aforequoted section, *i.e.,* to file an appeal with the CTA **or** to file an appeal with the CIR through a request for reconsideration are available only when the decision to the protest or the FDDA is issued by the Commissioner's duly authorized representative and not by the CIR himself. In the latter situation, the only option available to the taxpayer is to file an appeal with the CTA within thirty (30) days from receipt of the CIR's decision.

While we agree with the assailed Decision of the Court in Division that an appeal to the CIR does not toll the running of the thirty-day period to appeal to the CTA, it is imperative to point out that petitioner **chose the wrong remedy** as the FDDA issued by then CIR, Kim Jacinto-Henares, dated December 5, 2014 was already the final decision appealable to this Court. FDDAs issued and signed by the CIR cannot be appealed again

to the CIR for logical and practical reasons. Unfortunately, petitioner only filed an appeal with the Court in Division on September 18, 2015 which is way beyond the thirty day period provided by law, counted from December 5, 2014.

In fact, the FDDA already had a tenor of finality when the words "final, executory and demandable" were mentioned,[16] and we quote:

> "Failure to file an appeal or request for reconsideration or pay the tax within the time prescribed, the assessment shall become final, executory and demandable and therefore subject to delinquency penalties pursuant to RR 18-2013."

It is also important to point out that the contents of petitioner's request for reconsideration of the FDDA and addressed to then CIR, Kim Jacinto-Henares and filed on December 22, 2014,[17] was primarily anchored on its earlier payment of a significant portion of the total deficiency tax assessments and reiterating its protest against the remaining deficiency taxes. The subsequent RFDDA acknowledged said partial payments but informed the petitioner that it was still liable to pay taxes for taxable year 2009 which were specified and reiterated therein, thus answering the question as to why the CIR had to issue another "decision" in the form of an RFDDA dated August 20, 2015.

The case of *Misnet vs. CIR*[18] *(Misnet* case*)*, which petitioner cites in its Petition for Review, does not apply in this case because the facts therein are not on all fours with the facts of this case. The Supreme Court, in the *Misnet* case, found that there was (still) no final decision appealable to the CTA because of the taxpayer's pending protest filed with the Regional Director on the amended assessment notice issued. In the instant case, an FDDA was already issued by no less than the then CIR, Kim Jacinto-Henares. Likewise, neither does the ruling of the Supreme Court in the case of *Capitol Steel Corporation vs. CIR*[19] find mooring in this case since the original FDDA in said case was signed by a Regional Director and therefore may be administratively appealed further to respondent under the aforesaid law and Revenue Regulations.

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[16] BIR Records, pp. 1074-1077.
[17] Ibid.
[18] G.R. No. 210604, June 3, 2019.
[19] Ibid.

Well-settled is the rule that jurisdiction is conferred by law.[20]

Section 228 of the 1997 NIRC, as amended, provides 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:
>
> 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." *(emphases supplied)*

It is worthy to emphasize that when a court has no jurisdiction over the subject matter of a case, the only power it has is to dismiss the action,[21] hence, all other issues raised in the Petition for Review will no longer be discussed.

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[20] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014.
[21] Ibid.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is **DENIED**.

Accordingly, the assailed Decision dated March 12, 2020 and the assailed Resolution dated December 11, 2020, both of the Second Division of this Court, dismissing the case for lack of jurisdiction are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I join Justice Bacorro-Villena's Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

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CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 04 2023 11:35 a.m.

x - x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the dismissal of the present case as it clearly and indubitably appears that petitioner JG Summit Holdings, Inc.'s (**petitioner**'s/**JG Summit**'s) prior Petition for Review before the Second Division was filed out of time, hence, the Court failed to acquire jurisdiction over it. To bolster the conclusion reached in the *ponencia*, I am forwarding further legal anchors in this Concurring Opinion.

As found in the proceedings before the Second Division, petitioner received a Final Decision on Disputed Assessment[1] (**FDDA**) from the Commissioner of Internal Revenue (**CIR**). After an administrative request for reinvestigation, the CIR issued a *Revised* FDDA (**RFDDA**) received by petitioner on 20 August 2015 which recognized in part its partial payment of its tax liabilities in the *interim*. As petitioner contends, the 30-day period to appeal to this Court must be counted from its receipt of the RFDDA. This contention is, unfortunately, erroneous.

[1] Exhibit "R-14", BIR Records, pp. 1066-1077.

It is noteworthy that the issue involved is *not* novel and has already been settled by the Supreme Court as early as 1974 in the case of *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals, et al.*[2] (**Surigao**).

In *Surigao*, the Supreme Court held that a letter from the CIR demanding payment of assessed deficiency taxes could be interpreted as the CIR's final decision. Interestingly, in *Surigao*, the Supreme Court observed that the CIR had several correspondences with the taxpayer. The former first endorsed petitioner therein to the Auditor General who conducted an assessment of the latter's tax deficiencies. In a letter to the CIR, the taxpayer prayed for a reconsideration of the Auditor General's decision. Thereafter, the CIR reconsidered the Auditor General's decision in a letter dated 29 April 1963 (received by the taxpayer on 08 May 1963). The taxpayer again prayed for reconsideration of its tax deficiencies but the CIR denied the same in a subsequent letter issued on 28 June 1963 (which the taxpayer received on 16 July 1963).

In deciding when to tack the period to appeal to this Court, the Supreme Court ruled that 08 May 1963 or the date of the taxpayer's receipt of the CIR's *first* letter or *initial* decision should be considered as the reckoning point of the 30-day period to appeal. In *Surigao*[3] the Supreme Court ruled thusly:

> ...
>
> A close reading of the numerous letters exchanged between the petitioner and the Commissioner clearly discloses that the letter of demand issued by the Commissioner on April 29, 1963 and received by the petitioner on May 8, 1963 constitutes the definite determination of the petitioner's deficiency franchise tax liability or the decision on the disputed assessment and, therefore, the decision appealable to the tax court. This letter of April 29, 1963 was in response to the communications of the petitioner, particularly the letter of August 2, 1962 wherein it assailed the 4th Indorsement's data and findings on its deficiency, franchise tax liability computed at 5% (on the ground that its franchise precludes the imposition of a rate higher than the 2% fixed in its legislative franchise), and the letter of April 24, 1963 wherein it again questioned the assessment and requested for a recomputation (on the ground that the Government could make an assessment only for the period from May 29, 1956 to June 30, 1959). **Thus, as early as August 2, 1962, the petitioner already disputed the assessment made by the Commissioner.**
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> ...

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2 G.R. No. L-25289, 28 June 1974.

3 Supra at note 2; Emphasis supplied.

Similarly, in this case, JG Summit already disputed the CIR's assessment as early as 12 March 2014 when it filed its protest to the latter's Final Assessment Notice (**FAN**) and Formal Letter of Demand[4] (**FLD**). **Therefore, petitioner's receipt of the FDDA on 05 December 2014 should likewise be considered as the reckoning point of the period to appeal if the ruling in *Surigao* were to be followed.** Despite the passing of time, the principle held in Surigao remains relevant and consistent with Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides the manner for protesting assessments, to wit:

> ...
> **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...
> ...
>
> 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.**[5]
>
> ...

To further affirm the view that petitioner's request for reconsideration against the FDDA did not toll the statutory 30-day period of appeal, the Supreme Court in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[6] (**PAGCOR**) also categorically stated that, "...[a] whole or partial denial by the CIR may be appealed to the CTA."

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4 Exhibit "R-9", BIR Records, pp. 928-938.
5 Emphasis supplied.
6 G.R. No. 208731, 27 January 2016; underscoring supplied.

In the case at bar, the CIR herself (Kim Henares) issued the FDDA. Following the afore-cited provisions and the ruling in *PAGCOR*, **petitioner had no other option to prevent the FDDA from attaining finality other than to file an appeal with this Court which unfortunately it failed to timely do.**

Although it is true that nothing bars petitioner from pursuing an administrative remedy by filing a motion or request for reconsideration with the CIR, it has long been established that the filing of the same does not toll the 30-day period to appeal. This much has been settled by the Supreme Court in *Fishwealth Canning Corporation v. Commissioner of Internal Revenue*[7] (**Fishwealth**) where it held categorically:

> ...
>
> In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA.
>
> Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. **For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.**[8]
>
> ...

Considering the foregoing, it is undeniable that the FDDA and *not* the RFDDA should be considered as the CIR's final decision appealable to this Court. Thus, clearly, **when JG Summit filed a request for reconsideration of the FDDA with CIR Henares, its period to appeal to this Court continued to run and by the time the RFDDA was issued, such period had already prescribed.**

Besides this Court's procedural rules, the Court's authority to entertain cases of disputed assessments is provided in Republic Act (**RA**) No. 1125[9], as amended, particularly, Section 7(1) in relation to Section 11 thereof which states:

> ...
>
> **Sec. 7.** *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

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7 G.R. No. 179343, 21 January 2010.
8 Emphasis supplied and underscoring in the original text.
9 AN ACT CREATING THE COURT OF TAX APPEALS.

> (1) **Decisions of the Collector 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 or part of law administered by the Bureau of Internal Revenue[.]
>
> ...
>
> **Sec. 11.** *Who may appeal; effect of appeal.* - Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals **within thirty days after the receipt of such decision or ruling.**[10]
>
> ...

Succinctly, the right to appeal is not based on a procedural technicality that may be relaxed on a whim. As shown above, a taxpayer's right to appeal to this Court is defined by statute since, "... **the right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised *only* in the manner and *in accordance* with the provisions of law**".[11]

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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10 Emphasis supplied.

11 *Rosa H. Fenequito, et al. v. Bernardo Vergara, Jr.*, G.R. No. 172829, 18 July 2012; Emphasis and italics supplied.