REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ALPHALAND SOUTHGATE TOWER, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2251
(CTA Case No. 9610)

Present:

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

Promulgated:
APR 2 0 2022
10:05 a.m.

x- -x

DECISION

REYES-FAJARDO, *J.*:

This Petition for Review[1] dated March 6, 2020 challenges the Decision[2] dated December 13, 2019 and Resolution[3] dated February 14, 2020 in CTA Case No. 9610, whereby the Court in Division dismissed Alphaland Southgate Tower, Inc.'s Petition for Review for lack of jurisdiction.

The facts follow.

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1 *Rollo,* pp. 1-45.
2 *Id.* at pp. 48-62.
3 *Id.* at pp. 63-66.

Petitioner Alphaland Southgate Tower, Inc. is engaged in the business of real estate including leasing out units in Alphaland Southgate Tower. Petitioner is registered with the Philippine Export Processing Zone Authority as an Information Technology Economic Zone.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties and fines connected therewith.[5]

On August 15, 2014, petitioner received a Letter of Authority (LOA) dated August 12, 2014 issued by then OIC-Assistant Commissioner Nestor S. Valeroso (ACIR Valeroso) of the BIR's Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Margie Padre, Ivy Claudette Puno, and Group Supervisor (GS)- Mariesol Girang to examine its books of account and other accounting record for Value-Added Tax (VAT) for the period January 1, 2014 to June 30, 2014.[6]

On August 14, 2015, petitioner received a Preliminary Assessment Notice (PAN) issued by ACIR Valeroso, finding petitioner liable for deficiency VAT in the total amount of ₱50,774,168.22 and imposing a compromise penalty of ₱50,000.00.[7]

On August 28, 2015, petitioner filed its protest to the PAN, refuting the findings of deficiency VAT and requesting for the reconsideration and reinvestigation of the proposed assessment.[8]

On October 9, 2015, petitioner received the Audit Result/Final Assessment Notice (FAN) dated September 18, 2015 and Formal Letter of Demand (FLD) dated October 8, 2015 issued by ACIR Valeroso, assessing it for deficiency VAT with adjusted interest in the total amount of ₱52,165,553.78 and the imposition of compromise penalty of ₱50,000.00.[9]

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4 See Summary of Admitted Facts, Pre-Trial Order, Docket (CTA Case No. 9610), Volume I, p. 610.
5 *Id.* at pp. 609-610.
6 Exhibit "R-1," BIR Records, p. 1.
7 Exhibit "P-3," docket (CTA Case No. 9610), Volume II, pp. 726-738.
8 Exhibit "P-5," *id.* at pp. 744-759.
9 Exhibit "P-4," *id.* at pp. 739-743.

In the Letter dated November 3, 2015 filed through registered mail to ACIR Valeroso, petitioner protested the FAN/FLD by way of reinvestigation.[10]

On December 23, 2015, petitioner received a Final Notice Before Seizure (FNBS), issued by ACIR Valeroso,[11] demanding payment of the deficiency VAT in the total amount of ₱52,215,553.78, inclusive of interest and compromise penalty within ten (10) days from receipt thereof, followed by his Warrant of Distraint and/or Levy (WDL) issued on January 5, 2016.[12]

On January 7, 2016, petitioner filed its Request Letter for Re-investigation and Lifting of the WDL,[13] followed by its supplemental request[14] thereto filed on January 14, 2016.

On May 16, 2016, petitioner received a Letter dated May 5, 2016 issued by ACIR Valeroso,[15] stating that since petitioner failed to submit relevant supporting documents within the sixty (60)-day prescribed period in Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, the assessment had become final. Thus, petitioner was barred from disputing the correctness of the issued assessment and was required to pay the deficiency VAT immediately; otherwise, the BIR would be compelled to initiate remedies provided by law for the collection thereof.

In a Letter dated May 17, 2016 filed with the Office of ACIR Valeroso, petitioner sought reconsideration of the former's denial of petitioner's request for reinvestigation of its VAT liability.[16] Petitioner prayed that BIR recall its letter declaring the FAN/FLD final and executory. Petitioner thereafter submitted relevant VAT invoices and official receipts in support of the claimed input taxes on June 15, 2016.[17]

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10 BIR Records, pp. 541-544.
11 Exhibit "P-6," Docket (CTA Case No. 9610), Volume II, p. 760.
12 BIR Records, p. 164.
13 Exhibit "P-8," Docket (CTA Case No. 9610), Volume II, p. 762.
14 Exhibit "P-9," *id.* at pp. 763-765.
15 Exhibit "P-10," *id.* at pp. 766-767.
16 Exhibit "P-11," *id.* at pp. 768-781.
17 Exhibit "P-12," *id.* at pp. 782-791.

On June 29, 2016, petitioner received the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies[18] issued by ACIR Valeroso, reducing petitioner's deficiency VAT liability from ₱52,165,553.78 to ₱20,386,979.98. The compromise penalty remained at ₱50,0000.00.

On July 28, 2016, petitioner filed a Motion for Reconsideration to ACIR Valeroso's FDDA before respondent.[19] Respondent however denied petitioner's Motion for Reconsideration in his Letter-Decision received by petitioner on May 5, 2017.[20]

On June 5, 2017, petitioner filed a Petition for Review[21] before the Court in Division.

On December 13, 2019, the Court in Division rendered the challenged Decision,[22] the dispositive portion of which states:

> **WHEREFORE**, the Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**.

Petitioner moved,[23] but failed,[24] to obtain a reversal of the challenged Decision from the Court in Division; hence, this Decision.

Petitioner maintains that the Court in Division has jurisdiction over its Petition for Review. Under Section 228 of the NIRC, as implemented by RR No. 12-99, as amended by RR No. 18-2013, if the administrative protest is denied, in whole or in part, by the respondent'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 decision; or (ii) elevate its protest through a request for reconsideration to respondent within thirty (30) days from date of receipt of the decision. Should such request for

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18 Exhibit "P-13," *id.* at pp. 792-793.
19 Exhibit "P-14," *id.* at pp. 794-812.
20 Exhibit "P-15," *id.* at p. 813.
21 Docket (CTA Case No. 9610), Volume I, pp. 10-18.
22 *Supra* note 2.
23 Petitioner's Motion for Reconsideration dated December 26, 2019, docket (CTA Case 9610), Volume II, pp. 996-1016.
24 *Supra* note 3.

reconsideration filed with respondent be denied by the latter, the aggrieved taxpayer may appeal the same to the Court in Division within thirty (30) days from receipt thereof.

According to petitioner, it received ACIR Valeroso's FDDA on June 29, 2016; thus, it had thirty (30) days therefrom, or until July 29, 2016 to file an administrative appeal before respondent. As such, its request for reconsideration filed before respondent was timely filed on July 28, 2016. Given that petitioner received respondent's Letter-Decision on May 5, 2017, it had thirty (30) days therefrom, or until June 5, 2017 to file an appeal to the Court in Division; precisely its Petition for Review before the Court in Division was timely filed on June 5, 2017.

Petitioner admits that its protest to the FAN/FLD dated November 3, 2015 was not formally offered as evidence. Petitioner nonetheless claims that the Court may consider the same since the existence thereof was admitted by respondent's witness in the proceedings before the Court in Division.

Petitioner asserts that the FDDA and FAN/FLD are void because there was improper service of the FAN/FLD. Specifically, its president is the sole person allegedly authorized to receive the foregoing notices. Yet, respondent's agents served the FAN/FLD to its accounting clerk.

Assuming for the sake of argument that the FAN/FLD were properly served, petitioner believes that it is not liable for deficiency VAT because its sales of services to a PEZA-registered enterprise such as in the present case are subject to 0% VAT.

Respondent failed to file his comment to the Petition for Review, despite notice.[25]

THE RULING OF THE COURT

The petition is denied.

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[25] Records verification dated December 7, 2020. *Rollo*, p. 78.

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.[26] The jurisdiction of the Court regarding respondent's decision involving disputed assessments is found in Section 7(a)(1) of Republic Act (RA) No. 1125,[27] as amended by RA No. 9282 which reads:

> SEC. 7. *Jurisdiction.* — **The CTA shall exercise:**
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> (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;
>
> ...[28]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[29] further provides that the Court in Division has jurisdiction over the decision of the Commissioner of Internal Revenue involving disputed assessments, among others.[30] Hence, it is clear that the decision of respondent on a disputed assessment may be subject of an appeal before the Court in Division.

Here, the FAN/FLD issued by ACIR Valeroso were received by petitioner on October 9, 2015; thus, it had thirty (30) days, or until November 8, 2015 to file an administrative protest thereto. Petitioner filed through registered mail its Protest Letter dated November 3, 2015 addressed to ACIR Valeroso. Upon query of the latter on whether to act on petitioner's administrative protest, Deputy Commissioner Estela V. Sales issued a Memorandum dated April 20, 2016 whereby she confirmed that Protest Letter dated November 3,

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26 *Mactel Corporation v. The City Government of Makati, et al.*, G.R. No. 244602, July 14, 2021.
27 An Act Creating the Court of Tax Appeals.
28 Emphasis supplied.
29 A.M. No. 05-11-07-CTA.
30 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions 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 ....

2015 was timely filed by petitioner.[31] ACIR Valeroso confirmed that he received such Protest Letter dated November 3, 2015 on February 15, 2016.

In a letter dated May 5, 2019, ACIR Valeroso, acting on petitioner's Letter Protest dated November 3, 2015, considered the assessment **final and executory** for petitioner's failure to submit documents to support its request for reinvestigation, coupled with his directive to petitioner to immediately pay the deficiency VAT, lest the BIR shall be compelled to initiate remedies provided by law for the collection thereof. The pertinent portions of ACIR Valeroso's Letter dated May 5, 2016 received by petitioner on May 16, 2016 are hereby reproduced in *verbatim*, thus:

> ...
>
> This has reference to your letter of protest dated November 3, 2015, which was received by this office on February 15, 2016 relative to your request for reinvestigation of your Value-added Tax (VAT) liability ...
>
> ...
>
> However, despite the provisions of the aforementioned RR inclining to your favor to submit within the sixty (60)- day prescribed period all the relevant supporting documents, that as of May 5, 2016, we have not yet receive *(sic)* any single document to support your protest. Hence, this is tantamount to violation of Section 3 of RR No. 12-99, as amended by RR No. 18-2013 relative to the due process requirement in the issuance of a deficiency tax assessment.
>
> In view thereof, the **assessment shall become final**, thus you are barred from disputing further the correctness of the issued assessment and shall therefore be required to pay the deficiency VAT attributable thereto immediately, otherwise, we shall be compelled to initiate remedies provided by law for the collection of the said amount.[32]

It is settled that a final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter

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31 BIR Records, pp. 197-198.

32 *Supra* note 15, Emphasis supplied.

amounts to a final decision on a disputed assessment and is thus appealable to the CTA.[33]

A decision on a disputed assessment that is appealable to the Court in Division is one made by respondent and **by respondent's authorized representative**. In particular, Section 3.1.4 of RR No. 18-2013 provides that if the taxpayer receives a decision from respondent's authorized representative, it may either: *first,* appeal to the Court in Division within thirty (30) days from receipt thereof; or *second,* elevate to respondent through a request for reconsideration within the same period of time, to wit:

> ...
>
> 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. ...[34]

In *V.Y. Domingo Jewelers, Inc. v. Commissioner of Internal Revenue,*[35] the Supreme Court summarized the principles in this wise:

> ...
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> It is clear from the said provisions of the law that a protesting taxpayer like V.Y. Domingo has only three options to dispute an assessment:
>
> 1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest;
>
> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest;

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33 *Commissioner of Internal Revenue, v. Isabela Cultural Corporation,* G.R. No. 135210, July 11, 2001.

34 Emphasis supplied.

35 G.R. No. 221780, March 25, 2019.

> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. ...

As it stands, the decision of respondent's authorized representative must be appealed by the taxpayer within thirty (30) days from receipt thereof either with: *first*, the Court in Division; or *second*, respondent.

Conversely, failure of the taxpayer to avail either of these remedies would render the assessment final, executory and demandable.

Consider in this Case:

1. On **October 9, 2015**, petitioner received the FAN dated September 18, 2015 and FLD dated October 8, 2015 issued by ACIR Valeroso.[36]
2. In the Letter dated **November 3, 2015** filed through registered mail to ACIR Valeroso, petitioner protested the FAN/FLD by way of reinvestigation.[37]
3. **On May 16, 2016, petitioner received a Letter dated May 5, 2016 issued by ACIR Valeroso, stating that petitioner was barred from disputing the correctness of the issued assessment and was required to pay the deficiency VAT immediately; otherwise, the BIR would be compelled to initiate remedies provided by law for the collection thereof.**[38]
4. **In the Letter dated May 17, 2016 filed with the Office of ACIR Valeroso, petitioner sought reconsideration of the former's denial of its request for reinvestigation of its VAT liability.**[39]
5. On **June 5, 2017**, petitioner filed a Petition for Review[40] before the Court in Division.

Consistent with the above observations, petitioner had thirty (30) days from receipt of ACIR Valeroso's Letter dated May 5, 2016 on May 16, 2016, or until June 15, 2016 to either: *first*, appeal to the Court in Division; or *second*, file a request for reconsideration before

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36 *Supra* Note 9, Emphasis supplied.
37 *Supra* Note 31, Emphasis supplied.
38 *Supra* Note 15, Emphasis supplied.
39 *Supra* Note 16, Emphasis supplied.
40 *Supra* Note 21, Emphasis supplied.

respondent. None of these remedies were properly availed of by petitioner. Take for instance:

One, petitioner filed a Motion for Reconsideration to the Letter dated May 5, 2016 issued by ACIR Valeroso to the office of the latter. A request for reconsideration of a decision of respondent's authorized representative such as ACIR Valeroso may only be filed to respondent and to no other as prescribed in RR No. 18-2013.

Two, petitioner received ACIR Valeroso's Letter dated May 5, 2016 on May 16, 2016. Counting thirty (30) days from May 16, 2016, petitioner had until June 15, 2016 to appeal to the Court in Division. Yet, petitioner only filed a Petition for Review before the Court in Division on June 5, 2017, or way beyond the thirty (30)-day period to appeal under Section 228 of the NIRC, as implemented by RR No. 12-99, as amended by RR No. 18- 2013.

Here, petitioner's motion for reconsideration to respondent's authorized representative, ACIR Valeroso on May 17, 2016 did not toll the thirty (30)-day period to appeal to the CTA or the thirty (30)-day period to file a Request for Reconsideration with respondent. This being the case, it logically follows that the period to appeal to respondent should have started from receipt of the Letter dated May 5, 2016 on May 16, 2016. No appeal having been taken from said letter, the assessment became final, executory and demandable.

In *Roman Catholic Archbishop of Cebu v. The Collector of Internal Revenue,* [41] the Supreme Court ruled that the taxpayer's filing of three (3) requests for the reconsideration of his tax assessments did not toll the running of the period to file its appeal to the CTA. The Supreme Court explained:

> ...
>
> By these successive motions for reconsideration, the petitioner managed to delay the review of his case by the Tax Court for nearly two years. Such delays are plainly inimical to the general interest, ascertainment and collection of taxes being essential to the maintenance of the State. The decision by the Collector of Internal Revenue dated November 5, 1957, denying the second request for reconsideration of the assessment, was certainly reviewable by the Court of Tax Appeals. Hence, the 30-day appeal period should be

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41 G.R. No. L-16683, January 31, 1962

> counted from November 21, 1957, when the taxpayer received copy of the Collector's ruling. The running of the period was not interrupted by the filing of the third request for reconsideration, because the latter did not advance new grounds not previously alleged, and was, therefore, merely pro forma. Therefore, petitioner's petition for review should have been lodged with the Tax Court not later than December 21, 1957, but it was actually filed only on February 1, 1958. ...

Having failed to file the Petition for Review within thirty (30)-days from receipt of ACIR Valeroso's Letter dated May 5, 2016 on May 16, 2016 under Section 228 of the NIRC, as implemented by RR No. 12-99, as amended by RR No. 18-2013, the FAN/FLD issued by ACIR Valeroso against petitioner attained finality. This is notwithstanding the intervening events of the filing of petitioner's Motion for Reconsideration of ACIR Valeroso's FDDA before respondent on July 28, 2016 and the filing of petitioner's Petition for Review before the Court in Division on June 5, 2017. Indeed, we cannot countenance the theory that would make the commencement of the statutory 30-day period solely dependent on the will of the taxpayer and place the latter in a position to put off indefinitely and at his convenience the finality of a tax assessment. Such an absurd procedure would be detrimental to the interest of the Government, for taxes are the lifeblood of the government, and their prompt and certain availability an imperious need.[42]

WHEREFORE, the instant Petition for Review is **DENIED**. Accordingly, the Decision dated December 13, 2019 and the Resolution dated February 14, 2020 in CTA Case No. 9610 are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

(With due respect, I join the Dissenting Opinion of Justice Maria Rowena Modesto-San Pedro)
ROMAN G. DEL ROSARIO
Presiding Justice

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42 *Ibid*, citing *North Camarines Lumber Co., Inc., Petitioner, v. Collector of Internal Revenue*, G.R. No. L-12353. September 30, 1960.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

(With Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I join the Dissenting Opinion of Justice Maria Rowena Modesto-San Pedro)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ALPHALAND SOUTHGATE TOWER, INC.,
Petitioner,

CTA EB No. 2251
(CTA Case No. 9610)

- versus -

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 2 0 2022
10:05 a.m.

x - x

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the denial of the instant Petition for Review albeit on a different ground.

In the *ponencia* of my esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, it was noted that since petitioner Alphaland Southgate Tower, Inc. (**petitioner/Alphaland**) failed to file either: (1) an administrative appeal before the office of respondent Commissioner of Internal Revenue (**respondent/CIR**); or (2) appeal with the Court in Division, both within thirty (30) days from its receipt of the 05 May 2016 letter[1] on 16 May 2016, the assessment had already become final, executory and demandable.

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[1] Exhibit "P-10", Division Docket, Volume II, pp. 766-767.

With all due respect, however, it is my opinion that even prior to the receipt of the said 05 May 2016 letter, the assessment had already become final, executory and demandable when petitioner failed to file an appeal with the Court in Division within 30 days from receipt of the Warrant of Distraint and/or Levy[2] (**WDL**) on 05 January 2016.

To recap, petitioner claims that it filed its protest on 03 November 2015.[3] Subsequently, petitioner received a Final Notice Before Seizure[4] (**FNBS**) on 23 December 2015 and the WDL on 05 January 2016. After receiving the said WDL, petitioner did not file an appeal before the Court in Division; instead, it filed requests for reinvestigation[5] on 07 and 14 January 2016 with the same person who signed the previous FNBS and WDL, Assistant Commissioner Nestor S. Valeroso of the Large Taxpayers Service.

As early as in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[6], the 30-day period to appeal before this Court was already reckoned from the taxpayer's receipt of the WDL.

This was reiterated in the more recent case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[7] where the Supreme Court unequivocally declared that "[t]he warrant of distraint or levy issued by the Commissioner of Internal Revenue constitutes constructive and final denial of [the] belated protest, from which the 30-day period to appeal to the Court of Tax Appeals should be reckoned".

Thus, the Court in Division no longer had jurisdiction over the prior Petition for Review, as petitioner filed the same beyond the 30-day period prescribed by law.

Moreover, it bears to emphasize that the Court in Division also correctly noted that proof of petitioner's protest dated 03 November 2015 was not formally offered in evidence hence cannot be given evidentiary value.

While there are exceptions to this, as enunciated in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*[8] requiring that: (1)

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2 Exhibit "P-7", id., p. 761.
3 Paragraph 3.6, Petition for Review, id., Volume I, p. 12.
4 Exhibit "P-6", id., Volume II, p. 760.
5 Exhibits "P-8" and "P-9", id., pp. 762-765.
6 G.R. No. 162852, 16 December 2004.
7 G.R. No. 225809, 17 March 2021.
8 G.R. No. 149589, September 15, 2006, citing *Elvira Mato Vda. Oñate v. The Court of Appeals, et al.*, G.R. No. 116149, 23 November 1995.

evidence must have been identified by testimony duly recorded; and, (**2**) it must have been incorporated in the records of the case, the records are bereft of any indication that the same was identified by either of petitioner's witnesses, Jennette M. Manlosa and the Independent Certified Public Accountant (**ICPA**), Michael L. Aguirre.

In sum, I vote to **DENY** the instant Petition for Review and **AFFIRM** the assailed Decision and Resolution of the Second Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ALPHALAND SOUTHGATE TOWER, INC.		**CTA *EB* NO. 2251** *(CTA Case No. 9610)*
	Petitioner,	
		Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO, CUI-DAVID,** *JJ.*
-versus-		
COMMISSIONER OF INTERNAL REVENUE,		Promulgated: APR 2 0 2022
	Respondent.	10:05 a.m.

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* holding that the CTA has no jurisdiction over the present case. I take the view that the CTA can take cognizance of the present case involving an appeal of the Decision of the CIR on petitioner's Motion for Reconsideration, received by petitioner on 5 May 2017 ("5 May 2017 CIR Decision").

To recall, in the assailed Decision, the Court in Division dismissed the Petition for Review relying on the case of ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***,[1] which reckoned the 30-day period to appeal to the CTA from petitioner's receipt of the WDL. The assailed Decision reads:

[1] G.R. No. 162852, 16 December 2004.

> "As stated from the facts of this case, upon filing of protest by ASTI, the BIR issued an FLD and FAN. Thereafter, ASTI received a Final Notice of Seizure and subsequently, a WDL was issued by the BIR. ASTI then filed a Request for Reinvestigation and Lifting of Warrant of Distraint and later on filed another Request for Re-Investigation and Lifting of Warrant of Distraint and/or Levy. The BIR again denied the request of ASTI through a letter dated May 5, 2016. ASTI persistently filed again a letter of reconsideration and it was on June 29, 2016 when ASTI received an FDDA. Still, ASTI chose to elevate the matter through a Motion for Reconsideration before the BIR, which was denied thereafter.
>
> In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, (The "PJI Case")*, **the Supreme Court reckons the 30-day period to file an appeal before this Court from receipt of the WDL**. The WDL constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue which may be the subject of an appropriate appeal before this Court. Applying the foregoing, the receipt of the WDL by ASTI must be the reckoning period for its 30-day period to file a petition for review before the Court's division. ..."
> (Emphasis and underscoring supplied.)

As a rule, a WDL is proof of the finality of an assessment as it is tantamount to an outright denial of any request for reconsideration and it makes the said request deemed rejected.[2] However, jurisprudence has recognized exceptions to this rule. In the recent case of ***Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.,***[3] the Supreme Court enumerated several instances when a WDL was not considered as the final decision appealable to the CTA within thirty (30) days from notice:

> "However, in *Commissioner of Internal Revenue v. Union Shipping Corp.*, this Court treated the Commissioner's filing of the collection suit on December 28, 1978, not the issuance of the warrant of distraint and levy on November 25, 1976, **as the final action on the disputed assessment**, from which the period to appeal commenced to run. In that case, **the Commissioner did not rule on the protest earlier filed by Union Shipping Corp., but instead served a warrant of distraint and levy on November 25, 1976**. Two days after, or on November 27, 1976, Union Shipping Corp. **reiterated its motion for reconsideration and reinvestigation**. On December 28, 1978, the Commissioner instituted a collection case. Union Shipping Corp. filed a petition for review with the Court of Tax Appeals, which ruled in its favor and set aside the assessment.
>
> On appeal to this Court, the Commissioner assailed the timeliness of the petition for review, asserting that the 30-day period should have been reckoned from the issuance of the warrant on November 25, 1976, and not from the filing of the collection case on December 28, 1978. This Court rejected the Commissioner's stance, holding that the taxpayer was left in the dark as to which action of the Commissioner was appealable to the Court of Tax Appeals. This Court held that **since the Commissioner of Internal Revenue had not clearly signified the final action on the disputed assessment, legally, the period to appeal had not commenced to run.**

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[2] Commissioner of Internal Revenue v. Algue, Inc., G.R. No. L-28896, 17 February 1988.
[3] G.R. No. 225809, 17 March 2021.

> Thus, it was only when the taxpayer received the summons on the civil suit for collection of deficiency income on December 28, 1978 that the period to appeal began.
>
> In *Commissioner of Internal Revenue v. Algue*, this Court ruled that the Warrant could not be considered a denial of the taxpayer's protest, which was filed four days after the notice of assessment. This Court noted that since the **protest could not be located in the office of the Commissioner, it apparently was not taken into consideration when the Commissioner issued the warrant**.
>
> Also, in *Advertising Associates, Inc. v. Court of Appeals*, the **Commissioner's letter directing the taxpayer to appeal to the Court of Tax Appeals, and not the Warrant earlier served upon the taxpayer, was held to be the reviewable decision of the Commissioner**. This Court noted that the letter, which denied the taxpayer's requests for cancellation of the assessments and withdrawal of the warrants, demanded for payment of the deficiency taxes within 10 days from notice and closed with this paragraph: "This constitutes our final decision on the matter. If you are not agreeable, you may appeal to the Court of Tax Appeals within 30 days from receipt of this letter." This Court explained that the directive was in consonance with the dictum that the Commissioner should clearly indicate to the taxpayer what constitutes its final decision on disputed assessment. That procedure, said this Court, "is demanded by the pressing need for fair play, regularity and orderliness in administrative action[.]"
>
> *Union Shipping*, *Algue*, and *Advertising Associates* are not on point here. In Union Shipping, the taxpayer timely (a mere two days) filed a motion reiterating its request for reconsideration upon receipt of the warrant of distraint and levy. In Algue, the protest filed by the taxpayer could not be found in the Commissioner's office. Lastly, in Advertising Associates, the Commissioner issued a letter denying the request for cancellation of the warrant and categorically stating that it is the "final decision," and the taxpayer may appeal to the Court of Tax Appeals within 30 days."
> (Emphasis supplied.)

Going through the records of the present case, I am of the firm view that the exceptions apply in the instant case for the reasons discussed below.

First, similar to ***Union Shipping***, instead of ruling on the protest to the FLD/FAN earlier filed by petitioner on 3 November 2015 ("3 November 2015 Protest"), respondent, through ACIR Valeroso, issued and served a FNBS[4] and a WDL[5] on 5 January 2016. Two days thereafter, or on 7 January 2016, petitioner filed a Request for Reinvestigation and Lifting of the WDL[6] and another Request for Reinvestigation and Lifting of WDL on 14 January 2016.[7] In these letters, petitioner argued that its 3 November 2015 Protest was not considered in the issuance of the FNBS and WDL. Among others, petitioner also avers that it had not yet received the BIR's supporting schedules of the assessment to enable it to comprehensively respond thereto. Particularly,

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[4] Exhibit "P-6", Division Records Vol. 2, p. 760.
[5] Exhibit "P-7", *id.*, p. 761.
[6] Exhibit "P-8", *id.*, p. 762.
[7] Exhibit "P-9", *id.*, pp. 763-765.

petitioner was requesting for supporting details of the third party information used so that it could reconcile the BIR's findings with its own records.

Second, similar to ***Algue***, the 3 November 2015 Protest was not taken into consideration when ACIR Valeroso issued the WDL because there was a delay in the receipt of such protest, as recognized and explained by respondent in the BIR's letter, dated 5 May 2016,[8] Memorandum, dated 14 June 2016,[9] Details of Discrepancies attached to the FDDA,[10] and Memorandum, dated 22 August 2016.[11]

Third, in ***Advertising Associates, Inc.***, it was held that the letter directing the taxpayer to appeal to the CTA, and *not* the WDL earlier served, is the reviewable decision of the CIR. In the present case, the 5 May 2017 CIR Decision unequivocally communicated to petitioner in no uncertain terms that its protest had been denied and that recourse to the courts was a necessity. The 5 May 2017 CIR Decision directed petitioner to appeal to the CTA as follows: "This is our **FINAL** decision. If you disagree, you may appeal the same with the Court of Tax Appeals from receipt hereof, otherwise, the said deficiency tax assessments shall become final, executory, and demandable." [12] Thus, to my mind, the 5 May 2017 CIR Decision, and not the WDL, constitutes the CIR's final decision on the matter that is appealable to this court.

Given the foregoing, ***Philippine Journalists*** is not on all fours with the present case. Unlike in ***Philippine Journalists***, where the Court was confronted with the issue of whether the CTA could assume jurisdiction over the WDL (it being considered "other matters" over which the CTA can exercise jurisdiction), the issue involved in the present case is whether the CTA could assume jurisdiction over the decision of the CIR which denied petitioner's Motion for Reconsideration on the FDDA earlier issued by the CIR's authorized representative.

I am also of the view that, notwithstanding ACIR Valeroso's letter, dated 5 May 2016 ("5 May 2016 ACIR Decision"),[13] the CTA still has jurisdiction over the present case which seeks to appeal the 7 May 2017 CIR Decision.

I humbly cannot adhere to the finding of the majority that the final decision of the CIR is the 5 May 2016 ACIR Decision, which affirmed the deficiency assessment stated in the FLD/FAN requesting petitioner to pay the amount of ₱52,165,553.78 for VAT deficiency and ₱50,000.00 as

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[8] Exhibit "P-10", *id.*, pp. 766-767.
[9] Exhibit "R-9", BIR Records, pp. 926-934.
[10] Exhibit "P-13", Division Records Vol. 2, pp. 792-793.
[11] Exhibit "R-11", BIR Records, pp. 995-1002.
[12] Exhibit "P-15", Division Records Vol. 2, p. 813; Exhibit "R-12", BIR Records, p. 1006.
[13] Exhibit "P-10", Division Records Vol. 2, pp. 766-767.

compromise penalty.[14] This is because the same ACIR, after giving consideration to the protest and documents presented by petitioner, abandoned his earlier decision and issued an FDDA[15] significantly reducing the VAT deficiency assessment from ₱52,165,553.78 to ₱20,386,979.98 while retaining the ₱50,000.00 compromise penalty. In the FDDA, ACIR Valeroso explained that "Giving consideration [to] the said protest letter and documents presented, some of the assessments were dropped and that Final Decision has been issued." Thus, to my mind, the FDDA superseded the 5 May 2016 ACIR Decision, and such FDDA constituted the partial denial of the protest contemplated under ***Section 228 of the National Internal Revenue Code of 1997, as amended.***

Ultimately, among the basic precepts of administrative due process is for the tribunal to consider the evidence presented and for the decision to be presented based on evidence presented.[16] Here, the BIR's evaluation of supporting documents submitted by petitioner led to their issuance of the FDDA substantially reducing the deficiency assessment.

After receipt of the FDDA, consistent with ***Rev. Regs. No. 12-99 as amended by Rev. Regs. No. 18-13***, petitioner appealed to the CIR praying for the reconsideration of the FDDA. On 5 May 2017, petitioner received the CIR's decision denying its Motion for Reconsideration. The CIR's denial was anchored on the lack of merit in petitioner's arguments and contentions. The 5 May 2017 CIR Decision also recognized the FDDA at the reduced deficiency assessment. The 5 May 2017 CIR Decision pertinently reads:[17]

> "This refers to your letter dated July 14, 2016 requesting for a reconsideration of the deficiency Value Added Tax and Compromise Penalty for the period January to June 30, 2014 in the amount of P20,386,979.98 and P50,000.00 respectively, which is the subject matter of our Final Decision on Disputed Assessment (FDDA) dated June 20, 2016.
>
> Please be informed that after thorough and diligent review of your case, we find your contentions/arguments to be without merit, thus your Motion for Reconsideration is hereby **DENIED**. Accordingly, the aforesaid deficiency tax assessment per our FDDA are hereby reiterated.
>
> In view thereof, it is requested that the deficiency taxes contained in the FDDA and Assessment Notices amounting to **P21,007453.29 and P50,000.00** inclusive of adjusted interest be paid immediately upon receipt hereof.

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[14] Exhibit "P-4", *id.*, pp. 739-743; Exhibits "R-7", "R-8", and "R-8-a", BIR Records, pp. 153-159.
[15] Exhibit "R-10", BIR Records, pp. 941-944; Exhibit "P-13", Division Records Vol. 2, pp. 792-793
[16] Barroso v. Commission on Audit, G.R. No. 253253, 27 April 2021 and Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 and 201418-19, 3 October 2018 *citing* Ang Tibay v. Court of Industrial Relations, G.R. No. 46496, 27 February 1940.
[17] Exhibit "R-12", BIR Records, p. 1006.

> This is our **FINAL** decision. If you disagree, you may appeal the same with the Court of Tax Appeals within thirty (30) days from receipt hereof, otherwise, the said deficiency tax assessments shall become final, executory and demandable."

As such, on 5 June 2017,[18] petitioner appealed to the CTA praying that the assailed assessments, FDDA, and 5 May 2017 CIR Decision be declared null and void and/or canceled.[19]

Given all the foregoing, it is my humble view that the case should be remanded to the Court in Division for the determination of the merits of the VAT deficiency assessment as stated in the FDDA in the reduced amount of ₱20,386,979.98.

In ***Commissioner of Internal Revenue v. Alphaland Makati Place, Inc.***,[20] the CTA took cognizance of the case involving the same factual milieu. Similar to the said case, the instant case presents substantive issues, including issues on the validity of assessment, which warrant consideration by the Court in Division. On this point, I cannot hastily conclude that the assessment in the present case has attained finality warranting the dismissal of the case when the validity or invalidity of the assessment has not yet been determined by the Court in Division. Determination of the assessment's validity is crucial considering that a void assessment cannot attain finality.[21]

Finally, I disagree with the disquisition in the *ponencia* that taking cognizance of the present case makes the commencement of the statutory 30-day period depend solely on the will of the taxpayer and place the latter in a position to put off indefinitely and at its convenience the finality of the assessment. Quite the contrary, it is respondent, through ACIR Valeroso, who put off the finality of the assessment through his issuance of the FDDA substantially reducing the VAT deficiency assessment to ₱20,386,979.98 thereby revoking his earlier decision.

Premises considered, I vote to **GRANT** the Petition for Review, **REVERSE AND SET ASIDE** the Decision, dated 13 December 2019, and Resolution, dated 14 February 2020, both rendered by the Court of Tax Appeals Second Division, and **REMAND** the case to the Court of Tax Appeals Second Division for the determination of the merits of the assessment for the taxable period 1 January 2014 to 30 June 2014.

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[18] The next working day after 4 June 2017 which falls on a Sunday.
[19] *See* Petition for Review, Division Records Vol. 1, pp. 10-130.
[20] CTA EB No. 2292 (CTA Case No. 9609), 14 March 2022.
[21] Commissioner of Internal Revenue v. Fitness by Design, Inc. G.R. No. 215957, 9 November 2016; Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp., G.R. Nos. 197945 & 204119, 9 July 2018; Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, G.R. No. 241848, 14 May 2021.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice