REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, **- versus -** **RUBEN U. YU,** Respondent.	**CTA EB No. 2352** (CTA Case No. 9595) ***Present:*** **DEL ROSARIO,** P.J., **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** and **CUI-DAVID,** JJ. ***Promulgated:*** AUG 16 2022 4:00 pm

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on October 23, 2020 by petitioner, Commissioner of Internal Revenue (CIR), against respondent, Ruben U. Yu, praying that the *Decision* dated June 15, 2020, and the *Resolution* dated September 15, 2020, in CTA Case No. 9595, entitled *"Ruben U. Yu, petitioner, v. Commissioner of Internal Revenue, respondent"*, be reversed and set aside, and another one be rendered ordering respondent to pay ₱43,497,090.45 as deficiency income tax and value-added tax (VAT), inclusive of legal increments, for taxable years 2007 to 2010, plus surcharge, 20% deficiency and delinquency interest, as well as twelve percent (12%) interest on the total unpaid amount computed from January 1, 2018 until full payment thereof. The dispositive

[1] EB Docket, pp. 7 to 22.

portions thereof respectively read:

***Decision* dated June 15, 2020:**

> "**WHEREFORE**, the present Petition for Review is **GRANTED**. Accordingly, the revised FLD dated August 22, 2016 and the FLD and the attached Audit Results / Assessment Notices dated November 4, 2015 are declared **VOID** and are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

***Resolution* dated September 15, 2020:**

> "**WHEREFORE**, respondent's *Motion for Reconsideration (Re: Decision dated 15 June 2020)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed CIR, vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of his office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other laws, rules and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent is a Filipino, of legal age, married, and with address at 232 Cruzada Street, Legazpi City. He is the proprietor of RYU Construction, an entity engaged in the construction business.

On October 24, 2012, respondent received Letter of Authority (LOA) No. eLA201100045513 dated October 23, 2012, authorizing Revenue Officers (ROs) Amadeo Bernal and Ma. Lourdes Mirabete and Group Supervisor Armenia Ante, to examine his books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2007 to December 31, 2010. Pursuant to said LOA, respondent submitted documents on January 10, 2013 and

March 15, 2013.

On September 3, 2015, petitioner issued the Preliminary Assessment Notice (PAN) finding respondent liable for deficiency income tax and VAT in the aggregate amount of ₱45,401,355.90, inclusive of increments, for taxable years (TYs) 2007 to 2010.

Thereafter, petitioner issued the Formal Letter of Demand (FLD) on November 4, 2015, assessing respondent of deficiency income tax and VAT in the aggregate amount of ₱46,569,211.69, inclusive of increments, for TYs 2007 to 2010.

On December 3, 2015, respondent filed a protest disputing the correctness and the validity of the FLD, which was denied by Regional Director (RD) Alberto S. Olasiman (Olasiman) in his letter dated December 11, 2015.

On August 22, 2016, petitioner issued a revised FLD together with a letter, signed by RD Olasiman, denying respondent's request to submit payroll schedules for 2008 and 2010, demanding immediate payment of the said deficiency internal revenue tax liabilities, and stating that such is petitioner's final decision.

Respondent filed a request for reconsideration with petitioner, through registered mail, on September 20, 2016.

Within thirty (30) days from the lapse of petitioner's one hundred eighty (180)-day period to act on respondent's request for reconsideration, the latter filed a *Petition for Review*, through registered mail, on April 17, 2017, docketed as CTA Case No. 9595 entitled *"Ruben U. Yu v. Commissioner of Internal Revenue"*. The case was initially raffled to the First Division of this Court.

On September 14, 2017, petitioner filed his *Answer*, interposing the following defenses, to wit:

(a) The assessments were made pursuant to proper investigation/examination of available records and documents;

(b) Respondent continuously failed to submit his Books of Accounts, despite the issuance of a Subpoena Duces

Tecum (SDT No. 03-2003-RR10), and the extensions twice granted;

(c) Petitioner has the power to ascertain the correctness of returns filed in order to determine the liability for any internal revenue tax;

(d) The Best Evidence Obtainable Method was properly applied and the investigations were correct to verify the amounts through Third Party Information;

(e) The assessments are based on the findings per investigation conducted pursuant to the LOA dated October 23, 2012;

(f) The assessments have factual and legal basis and were issued within the period prescribed by law; and

(g) Respondent cannot feign innocence and allege that he did not receive the PAN which was issued, sent, and mailed by petitioner.

Respondent filed his *Reply* through registered mail on September 29, 2017:

(a) Vehemently denying that he feigned innocence when he categorically stated in his *Petition for Review* in CTA Case No. 9595 that he did not receive the PAN;

(b) Stating that petitioner failed to present the original Registry Return Receipt No. 15-792 allegedly signed as received by Ma. Victoria Baltazar Yu on September 20, 2015;

(c) Stating that respondent obtained a certified machine copy of Registry Return Receipt No. 15-792 from the Philippine Postal Corporation dated September 30, 2015, and the name *"Ruben Yu"* was written on top of the caption *"Signature of Addressee over Printed Name"* but does not show any signature of respondent. Even assuming that the words *"Ruben Yu"* appear to be a signature of the addressee acknowledging receipt of the PAN, respondent's signature is very much different from what appeared on the Registry Return Receipt, and respondent does not sign documents and communications as *"Ruben Yu"*;

(d) Stating that there can be no two (2) registered letters purportedly received by addressees on different dates with only one Registry Receipt Number;

(e) That the Certification of Postmaster Honorio A. Pecundo states *that "no letter addressed to Mr. Ruben Yu of Cruzada, Legazpi City was delivered on September 30, 2015 as appearing in the available record of the letter carrier..."*; and

(f) That the complaint filed by the Bureau of Internal Revenue against respondent before the Department of Justice, Manila was dismissed pursuant to the Resolution dated January 13, 2017.

Meanwhile, petitioner submitted the BIR Records of the instant case on November 16, 2017.

After the Pre-Trial Conference held on November 23, 2017, the parties submitted their *Joint Stipulation of Facts* on December 14, 2017. The same was approved in the *Resolution* dated December 20, 2017, while the *Pre-Trial Order* was issued on February 20, 2018.

During trial, respondent presented three (3) witnesses, namely, respondent himself, Ruben U, Yu, Ma. Victoria C. Baltazar, Adminstrator of RYU Construction, and Honorio A. Pecundo, former Postmaster VI of Philippine Postal Corporation.

On April 23, 2018, respondent filed his *Formal Offer of Evidence*. Petitioner filed his *Comment Re: Petitioner's Formal Offer of Evidence* on May 2, 2018. In the *Resolution* dated August 10, 2018, the First Division admitted respondent's exhibits, except for Exhibits "P-15" and "P-16" for failure to identify.

In the *Order* dated September 26, 2018, the instant case was transferred to this Court's Second Division (Court in Division).

For his part, petitioner presented three (3) witnesses, namely: Amadeo M. Bernal, Chief Revenue Officer II; D'Joanna M. Diamante, Revenue Officer II – Assessment; and Adela Pleshette B. Villar, Administrative Assistant I.

On March 13, 2019, petitioner filed his *Formal Offer of Evidence.* Respondent filed his *Comment on Respondent's Formal Offer of Evidence*, through registered mail, on March 25, 2019. In the *Resolution* dated April 15, 2019, the Court in Division admitted petitioner's exhibits, and gave the parties a period of thirty (30) days from notice to file their respective memorandum.

On May 16, 2019, petitioner filed a *Manifestation* stating that he is adopting the arguments raised in the *Answer* as his *Memorandum*, while respondent's *Memorandum for the Petitioner* was filed, through registered mail, on June 6, 2019. CTA Case No. 9595 was submitted for decision on June 28, 2019.

On June 15, 2020, the Court in Division rendered the assailed *Decision*[2] granting respondent's *Petition for Review*, and declaring as void, and cancelling and setting aside, the revised FLD dated August 22, 2016, and the FLD and the attached Audit Results / Assessment Notices dated November 4, 2015.

Dissatisfied with the Court in Division's *Decision*, petitioner filed a *Motion for Reconsideration Re: Decision dated 15 June 2020*[3] on July 2, 2020 via registered mail. Respondent filed his *Comment on Respondent's Motion for Reconsideration*[4] on August 6, 2020 also via registered mail.

In the assailed *Resolution*[5] dated September 15, 2020, the Court in Division denied petitioner's *Motion for Reconsideration (Re: Decision dated 15 June 2020)* for lack of merit.

Thus, on October 8, 2020, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[6] and on October 23, 2020, the instant *Petition for Review*[7] was filed, which was docketed as CTA EB No. 2352.

In the *Resolution*[8] dated November 26, 2020, the Court *En Banc* ordered petitioner's counsel, Atty. Luigi A. Bacani (Atty. Bacani),

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[2] EB Docket, pp. 29 to 61; Division Docket Vol. II (CTA Case No. 9595), pp. 514 to 546.
[3] Division Docket Vol. II (CTA Case No. 9595), pp. 547 to 567.
[4] Division Docket Vol. II (CTA Case No. 9595), pp. 572 to 573.
[5] EB Docket, pp. 62 to 64; Division Docket Vol. II (CTA Case No. 9595), pp. 578 to 580.
[6] EB Docket, pp. 1 to 3.
[7] EB Docket, pp. 7 to 22.
[8] EB Docket, pp. 67 to 68.

to submit his updated IBP No., within five (5) days from receipt of said *Resolution*, and also ordered respondent to file his *Comment* to the *Petition for Review*, within ten (10) days from receipt of said *Resolution*.

On January 13, 2021, respondent filed his *Comment on Petition for Review.*[9]

On February 9, 2021, the Court *En Banc* issued the *Resolution*[10] ordering Atty. Bacani to show cause why the subject *Petition for Review* should not be dismissed, and why Atty. Bacani should not be cited for contempt, for failure to comply with the Court *En Banc's Resolution* dated November 26, 2020. The Court *En Banc* also noted without action, respondent's failure to file his *Comment*.

On February 19, 2021, petitioner filed a *Manifestation*[11] stating that petitioner's failure to comply with the *Resolution* dated November 26, 2021 is due to the fact that Atty. Bacani needed time to secure the receipt for his payment of IBP dues for the year 2020 to show proof of compliance thereto. Petitioner attached Atty. Bacani's official receipt dated January 31, 2020, and prayed that the *Manifestation* be noted by the Court *En Banc*.

On March 12, 2021, the Court *En Banc* issued the *Resolution*,[12] noting the *Manifestation* filed by petitioner's counsel and considering the same as sufficient compliance with the *Resolutions* dated November 26, 2020 and February 9, 2021, and noting respondent's *Comment on Petition for Review*. The instant case was also referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA). The proceedings on the case were suspended for thirty (30) days starting from the date of the preliminary mediation conference.

On March 17, 2021, respondent filed a *Manifestation*,[13] through private courier, stating that he seasonably filed eight (8) copies of his *Comment on Petition for Review* via registered mail on January 13, 2021, and that he is submitting eight (8) machine copies of respondent's *Comment on Petition for Review* which was earlier filed

[9] EB Docket, pp. 70 to 72.
[10] EB Docket, pp. 75 to 76.
[11] EB Docket, pp. 77 to 78.
[12] EB Docket, pp. 83 to 84.
[13] EB Docket, pp. 85 to 86.

on January 13, 2021. Respondent prayed that the *Manifestation* be noted and that the Court *En Banc's* order to respondent contained in the *Resolution* dated November 26, 2020 be considered complied with.

On May 20, 2021, the Court *En Banc* issued the *Minute Resolution*[14] noting respondent's *Manifestation* dated March 17, 2021.

On July 1, 2021, the PMC-CTA issued a "Back to Court",[15] returning the instant case to the Court *En Banc* due to respondent's refusal to undergo mediation, with attached *Manifestation*[16] by respondent that he will not agree to enter into mediation.

On July 21, 2021, the Court *En Banc* issued the *Resolution*,[17] stating that on July 1, 2021, the Court *En Banc* received the "Back to Court" submitted by the PMC-CTA, stating that the mediation has been refused by respondent. The same was also shown in respondent's *Manifestation* submitted to the PMC-CTA. The Court *En Banc* noted the "Back to Court" submitted by the PMC-CTA, gave due course to the *Petition for Review*, and submitted the case for decision. Hence, this *Decision*.

ISSUE

Petitioner presents the following assignment of error for the Court *En Banc's* consideration, to wit:

> "The Honorable Court erred in ruling that assessment is void because of violation of respondent's due process rights."[18]

Petitioner's arguments:

Petitioner argues that the PAN was duly sent and mailed to, and served upon, respondent, and due process was rightfully observed.

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[14] EB Docket, p. 92.
[15] EB Docket, p. 93.
[16] EB Docket, pp. 94 to 95.
[17] EB Docket, pp. 98 to 99.
[18] EB Docket, p. 9.

Petitioner alleges that the BIR Records reveal that the PAN dated September 3, 2015 was mailed through registered mail. Petitioner claims that the Registry Return Receipt attached to the PAN shows the details on how the PAN was mailed to, and served upon, respondent. Moreover, petitioner asserts that the Certification dated February 10, 2016 issued by the Philippine Postal Corporation supports petitioner's assertion that the PAN was delivered and served to, and received by, respondent.

Considering that the Registry Return Receipt and the Certification are public documents issued by the government, petitioner claims that the presumptions under Sections 3 (m) and (v), Rule 131 of the Rules of Court, that the official duty has been regularly performed, and a letter duly directed and mailed was received in the regular course of mail, respectively, prevail. According to petitioner, respondent failed to contradict the presumptions with evidence.

Petitioner also contends that the assessments have factual and legal basis. Allegedly, the assessments were made pursuant to proper investigation/examination of the available records and documents.

According to petitioner, respondent was given an opportunity to submit his books of accounts but continuously failed to do so; thus, the Best Evidence Obtainable method was properly applied. Petitioner claims that he has the power to obtain information from any person other than the one whose internal revenue tax liability is subject to audit and investigation.

Moreover, petitioner asserts that the investigation was not defective since further investigation was made when respondent requested for a reinvestigation.

Finally, petitioner claims that the assessment was issued within the period prescribed by law.

Respondent's counter-arguments:

Respondent points out that the arguments raised by petitioner in the instant *Petition for Review* are bare rehash of the arguments

contained in his previous pleadings, which have been extensively resolved and passed upon by the Court in Division.

Respondent counter-argues that while petitioner maintains that the PAN was mailed through registered mail, mailing alone is not sufficient. According to respondent, the PAN must be actually received by the taxpayer.

Respondent insists that he did not receive the PAN. As such, his right to due process was violated, rendering the assessment void.

Respondent also claims that the disputable presumption of receipt in the regular court of mail under Section 3 (v), Rule 131 of the Rules of Court has been contradicted and overcome by evidence proving that respondent did not receive the PAN.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is meritorious.

Respondent's Petition for Review in CTA Case No. 9595 was prematurely filed; hence, the Court in Division had no jurisdiction to take cognizance of the same.

At the outset, the Court *En Banc* is not precluded from looking into the issue of the Court's jurisdiction, even if not raised in the present *Petition*, considering that the matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[19]

Section 228 of the NIRC of 1997, as amended, provides the procedure in protesting an assessment, to wit:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds

[19] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x

xxx xxx xxx

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final executory and demandable." *(Emphasis and underscoring supplied)*

Relative thereto, Section 3.1.4 of Revenue Regulations (RR) No. 12-99,[20] as amended by RR No. 18-2013,[21] explains in detail the procedure when protesting a disputed assessment, to wit:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

[20] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of the National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[21] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

xxx xxx xxx

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* — refers to a plea of re-evaluation of an 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.

(ii) *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 of law or both.

xxx xxx xxx

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term *"relevant supporting documents"* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

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.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision

> **to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> **It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.** *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, a taxpayer has the following options after filing a protest to the FLD as follows:

1. If the protest is denied, in whole or in part, by the CIR'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;

2. If the protest is denied, in whole or in part, by the CIR, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision;

3. If the protest is not acted upon by the CIR's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or

4. If the protest or administrative appeal is not acted upon by the CIR within one hundred eighty (180) days **counted from the date of filing of the protest**, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the CIR on the disputed assessment

and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

As specifically applied in this case, where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given two (2) alternative remedies, either to: (a) appeal to the CTA within thirty (30) days from the date of receipt of the representative's decision; or (b) to elevate his protest through a request for reconsideration to the CIR, within the same thirty (30)-day period, otherwise referred to as an *"administrative appeal"*.

Thereafter, if the taxpayer's administrative appeal is not acted upon by the CIR within one hundred eighty (180) days from the filing of the protest, the concerned taxpayer may either: (a) appeal to the CTA within thirty (30) days from the expiration of the said one hundred eighty (180)-day period; or (b) await the final decision of the CIR on the disputed assessment, and appeal such final decision to the CTA within thirty (30) days from receipt of a copy thereof.

In the instant case, respondent filed a protest on December 3, 2015,[22] disputing the correctness and the validity of the FLD and requesting for a reinvestigation. Thus, respondent had sixty (60) days from December 3, 2015, or until February 1, 2016 to submit the required documents, while petitioner's duly authorized representative, RD Olasiman, had one hundred eighty (180) days from February 1, 2016, or until July 30, 2016 to act on respondent's protest.

Respondent opted to wait for RD Olasiman's decision instead of filing an appeal with the CTA within thirty (30) days from July 30, 2016, or by August 29, 2016.

On August 22, 2016, RD Olasiman issued the revised FLD, together with a letter denying respondent's request to submit payroll schedules for 2008 and 2010, and demanding immediate payment of the said deficiency internal revenue tax stating that it is petitioner's final decision. A cursory reading of the said letter states, among other things, that "*this is our final decision. If you disagree, you may appeal this final decision to the Court of Appeals or to the Commissioner of Internal Revenue xxx.*"[23]

[22] BIR Records, Folder 2, pp. 682 to 689.
[23] Division Docket – Vol. I (CTA Case No. 9595), pp. 24 to 28.

Thereafter, respondent filed a request for reconsideration with petitioner, through registered mail, on September 20, 2016.

Within thirty (30) days from the lapse of petitioner's one hundred eighty (180)-day period to act on respondent's request for reconsideration, the latter filed a *Petition for Review*, through registered mail, on April 17, 2017, docketed as CTA Case No. 9595 entitled *"Ruben U. Yu v. Commissioner of Internal Revenue"*.

To the mind of the Court *En Banc*, the revised FLD constitutes as the final decision, following the ruling of the Supreme Court in *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue*,[24] which states:

> "Moreover, **the letter of demand dated April 29, 1963 unquestionably constitutes the *final action* taken by the Commissioner on the petitioner's several requests for reconsideration and recomputation**. In this letter, the Commissioner not only in effect demanded that the petitioner pay the amount of P11,533.53 but also gave warning that in the event it failed to pay, the said Commissioner would be constrained to enforce the collection thereof by means of the remedies provided by law. **The tenor of the letter, specifically, the statement regarding the resort to legal remedies, unmistakably indicates the final nature of the determination made by the Commissioner of the petitioner's deficiency franchise tax liability.**
>
> The foregoing-view accords with settled jurisprudence — and this despite the fact that nothing in Republic Act 1125, as amended, even remotely suggests the element truly determinative of the appealability to the Court of Appeals of a ruling of the Commissioner of Internal Revenue. Thus, **this Court has considered the following communications sent by the Commissioner to taxpayers as embodying rulings appealable to the tax court: (a) a letter which stated the result of the investigation requested by the taxpayer and the consequent modification of the assessment; (b) letter which denied the request of the taxpayer for the reconsideration cancellation, or withdrawal of the original assessment; (c) a letter which contained a**

[24] G.R. No. L-25289, June 28, 1974.

> **demand on the taxpayer for the payment of the revised or reduced assessment; and (d) a letter which notified the taxpayer of a revision of previous assessments**." *(Emphasis supplied)*

Based on the foregoing jurisprudential pronouncement, communications sent by the CIR to taxpayers which embody rulings appealable to this Court, include not only letters which denied the request of the taxpayer for the reconsideration, cancellation, or withdrawal of the original assessment, but also include letters which contained a demand on the taxpayer for the payment of the revised or reduced assessment, and letters which notified the taxpayer of a revision of previous assessments.

Here, the revised FLD issued by RD Olasiman on August 22, 2016 may be treated as "*a letter which contained a demand on the taxpayer for the payment of the revised or reduced assessment*" or "*a letter which notified the taxpayer of a revision of previous assessments*". Such being the case, the revised FLD is appealable to the Court in Division.

Accordingly, respondent had the option to file an appeal with the CTA within thirty (30) days from receipt of RD Olasiman's final decision on August 22, 2016, or to file a request for reconsideration with the CIR within thirty (30) days from receipt of the final decision. In this case, respondent chose the latter and filed a request for reconsideration with petitioner on September 20, 2016.

Due to the inaction of petitioner on said request for reconsideration within a period of one hundred eighty (180) days, respondent filed a *Petition for Review* before the Court in Division on April 17, 2017, docketed as in CTA Case No. 9595.

However, for the Court in Division to exercise jurisdiction over the *Petition for Review* in CTA Case No. 9595, the appeal must have been brought within thirty (30) days **from receipt of petitioner's decision on respondent's request for reconsideration**. Notably, the CIR has yet to issue his decision on respondent's request for reconsideration.

In this case, it appears that respondent was under the impression that petitioner had a fresh one hundred eighty (180)-day period to act on his request for reconsideration, considering that

respondent filed the *Petition for Review* in CTA Case No. 9595 within thirty (30) days from the lapse of the one hundred eighty (180)-day period for petitioner to act on his request for reconsideration.

A careful reading of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, reveals that if the administrative appeal is not acted upon by the CIR within one hundred eighty (180) days **counted from the date of filing of the protest** and the taxpayer fails to appeal to the CTA within thirty (30) days from the expiration of the one hundred eighty (180)-day period **counted from the date of filing of the protest**, the only remaining option for the taxpayer is to wait for the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within thirty (30) days from receipt of the decision.

To be clear, the one hundred eighty (180)-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, is **confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the Final Assessment Notice/FLD**. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate one hundred eighty (180)-day period within which to decide the administrative appeal.

It must be emphasized that in case of the inaction of the CIR on the protested assessment, the taxpayer has two options, either: (1) file a petition for review with the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (2) await the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision, these **options are mutually exclusive and resort to one bars the application of the other**.[25]

From the foregoing, respondent's only option now is to wait for petitioner's decision on his request for reconsideration given that the 180+30-day period is no longer available to respondent. As such, when respondent filed the *Petition for Review* in CTA Case No. 9595

[25] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012.

within thirty (30) days from the lapse of the one hundred eighty (180) days counted from September 20, 2016, the same was still premature as respondent still has not received petitioner's decision on his request for reconsideration. Absent any decision from petitioner, the Court in Division cannot acquire jurisdiction over the case.

It is a well-settled that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide on the merits.[26]

With the foregoing ruling, the Court *En Banc* finds that it is no longer necessary to address the other arguments raised by petitioner.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**.

The assailed *Decision* dated June 15, 2020 and the assailed *Resolution* dated September 15, 2020 by the Second Division of this Court in CTA Case No. 9595 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[26] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

CATHERINE T. MANAHAN
Associate Justice

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

(With due respect, I join the Concurring Opinion of PJ Del Rosario)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I join the Concurring Opinion of PJ Del Rosario)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

RUBEN U. YU,
Respondent.

CTA EB No. 2352
(CTA Case No. 9595)

Present:

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

Promulgated:
AUG 16 2022 4:10 pm

x- -x

CONCURRING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in holding that the Court in Division has no jurisdiction over the Petition for Review filed by respondent Ruben U. Yu.

Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II) v. Commissioner of Internal Revenue[1] elucidates that:

> "As correctly ruled by the CTA *EB*, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code) unmistakably provides that the **one hundred eighty (180)-day period should be reckoned from the 'submission of documents,'** which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 2017, to elevate the case to the CTA. However, it filed

[1] G.R. No. 258101, April 19, 2022.

> its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner of Internal Revenue (respondent), **including the option of elevating the protest to the respondent himself through a request for reconsideration.** However, **nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal**. As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law." *(Boldfacing and underscoring supplied; citations omitted)*

Respondent mistakenly counted a fresh period of 180 days from **September 20, 2016** for the petitioner to decide on the appealed decision of petitioner's authorized representative. Respondent erroneously believed that it had thirty (30) days from the lapse of another 180-day period reckoned from September 20, 2016 or until April 18, 2017, within which to file a Petition for Review. Respondent filed his Petition for Review with the Court in Division on April 17, 2017 purportedly to appeal the inaction of the CIR on his Motion for Reconsideration.

Applying *Nueva Ecija II Electric Cooperative, Inc. Area II (NEECO II Area II)*, it is evident that the course of action taken by respondent is procedurally infirm. The only remedy available to him is to await for petitioner's decision on his Motion for Reconsideration and appeal the same to the Court in Division within thirty (30) days from receipt thereof. **Since no decision yet was issued by petitioner, the filing of respondent's Petition for Review before the Court in Division is premature; hence, the Court in Division has no jurisdiction to take cognizance of the case.**

All told, I vote to **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue; **REVERSE** and **SET ASIDE** the assailed Decision and Resolution of the Court in Division; and, **DISMISS** the Petition for Review filed by Ruben U. Yu before the Court in Division for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RUBEN U. YU,
Respondent.

CTA EB NO. 2352
(CTA Case No. 9595)

Present:

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

Promulgated:
AUG 16 2022 4:10 pm

x - x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague, Associate Justice Erlinda P. Uy, finding the Court to be without jurisdiction over the present action.

Previously, I concurred in the original *ponencia* which found petitioner to have violated respondent's due process rights due to the former's failure to prove actual service of the Preliminary Assessment Notice (**PAN**). As a result, the assessment was declared null and void, essentially affirming the assailed Decision and Resolution of the Court's Second Division on 15 June 2020 and 15 September 2020, respectively in CTA Case No. 9595 entitled *Ruben U. Yu v. Commissioner of Internal Revenue.*

After a second hard look, I have decided to forego my previous position in favor of the present *ponencia*.

In a Resolution dated 19 April 2022, the Supreme Court, in the case of *Nueva Ecija II Electric Cooperative, Inc., Area II (NEECO II Area II) v. Commissioner of Internal Revenue*[1] (**NEECO II**), affirmed the CTA *En Banc's* Resolutions dated 10 March 2021 and 28 October 2021, respectively, in CTA EB Case No. 2319 which, in turn, affirmed the CTA First Division's Decision in CTA Case No. 9605.

In CTA Case No. 9605, the CTA First Division ruled that there is only one (1) 180-day period for the Commissioner of Internal Revenue (**CIR**) or his agent to act on a taxpayer's protest counted from the taxpayer's submission of its supporting documents pursuant to Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Therefore, when the CIR's agent decides on a taxpayer's protest within said period, the taxpayer would have two (2) options in case of an adverse decision: (1) elevate its case to the CIR; and, (2) file a judicial protest with the CTA.

As for the first option, the running of the 180-day period is not tolled by an appeal to the CIR, neither is the 180-day period renewed as a result of such appeal. Consequently, the CTA First Division held, thusly:

> ...
>
> On September 28, 2016 (or on the 8th day from the submission of the relevant supporting documents on September 19, 2016), OIC-Regional Director Sabariaga already rendered a decision which was received by petitioner on October 7, 2016. **Petitioner elevated its protest to the CIR on November 4, 2016**. When respondent elevated its protest, the CIR had the remaining 134 days of the 180-day period or until March 18, 2017 within which to decide the protest. From March 18, 2017 (the 180th day), petitioner had thirty (30) days or until April 17, 2017 to appeal to the CTA, if it so desires, **or** await the final decision of the CIR himself and appeal said CIR's final decision to the CTA within thirty (30) days from receipt thereof. **Respondent neither filed an appeal to the CTA within thirty (30) days from the lapse of the 180-day period on March 18, 2017 nor did it await the decision of the CIR himself.**
>
> Instead, petitioner mistakenly counted a new period of 180 days from **November 4, 2016** for the CIR to decide on the appealed decision of his authorized representative. Petitioner erroneously believed that it had thirty (30) days from the lapse of the 180-day period reckoned from November 4, 2016 or until June 3, 2017, within

[1] G.R. No. 258101.

which to file a Petition for Review with the CTA. Accordingly, petitioner filed its Petition for Review on June 2, 2017.

When the decision of the CIR's authorized representative was appealed to the CIR, **the running of the 180-day period remained to commence from September 19, 2016, the date when respondent submitted the relevant supporting documents in support of its protest;** the 180-day period was not interrupted nor tolled when petitioner appealed the decision of the CIR's authorized representative to the CIR.

To emphasize, petitioner opted to appeal the CIR's inaction to the CTA, yet it filed its Petition for Review only on June 2, 2017 or **forty-four (44) days late, the last day of filing the Petition for Review being April 17, 2017.**

Since the present Petition for Review was filed way beyond the thirty (30)-day reglementary period to appeal, the CTA was deprived of jurisdiction to take cognizance of the case. Thus, the Court cannot decide the case on the merits as the only power left with it is to dismiss the case.[2]

...

Affirming this view, the Supreme Court in *NEECO II*[3] held, to wit:

...
...However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal. As aptly observed by the CTA *EB*, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. ...
...

To my mind, such view better serves the orderly disposition of justice. In trying every case, jurisdiction remains of paramount consideration. The Supreme Court in *Alfredo J. Non, et al. v. Ombudsman, et al.*[4] ruled, thusly:

...
Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law.

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2 Citation omitted, emphasis and underscoring in the original text.
3 Supra at note 1.
4 G.R. No. 251177, 08 September 2020, citing *Governmnet Service Insurance System v. Daymiel, et al.*, G.R. No. 218097, 11 March 2019.

> Only a statute can confer jurisdiction on courts and administrative agencies.
> ...

In tax cases, determination of the Court's jurisdiction over a particular case not only avoids premature determinations on the case's merits without administrative remedies being exhausted but likewise, prevents petitioner's final and executory decisions from being re-opened.

Given the above disquisitions, I find the conclusion in the *ponencia* proper. Thus, I join the vote to **GRANT** the petition filed by Commissioner of Internal Revenue, **REVERSE and SET ASIDE** the assailed Decision dated 15 June 2020 and the Resolution of 15 September 2020, respectively, in CTA Case No. 9595.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice