REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JTKC LAND, INC.,
Petitioner,

CTA *EB* NO. 2378
(CTA Case No. 9597)

Present:

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 05 2022 10:45 am

x- x

DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by JTKC Land, Inc. (JTKC) assailing the Decision dated July 13, 2020, and Resolution dated October 26, 2020 both of the Second Division of the Court (Court in Division) in CTA Case No. 9597 which dismissed the Petition for Review for lack of jurisdiction. The pertinent portions of the Decision and Resolution are quoted below:

Decision dated July 13, 2020:

> "Clearly, the filing of the present Petition for Review before this Court on May 24, 2017 was already time-barred. By then, the deficiency tax assessment against petitioner already became final, executory and demandable. Consequently, this Court is precluded from acquiring jurisdiction over the present case.

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[1] EB Docket, Volume I, pp. 110-202.

Given that this Court has no jurisdiction to take cognizance of the present case, it has no other option but to dismiss the same.

WHEREFORE, the present Petition for Review is **DISMISSED** for lack of jurisdiction."

SO ORDERED."[2]

Resolution dated October 26, 2020:

"**WHEREFORE**, petitioner's Motion for Reconsideration (Re: Decision promulgated on 13 July 2020) is **DENIED** for lack of merit.

SO ORDERED."[3]

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested with the authority to carry out the functions, duties and responsibilities of said office including, among others, the power to cancel disputed assessments.

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at G/F Amorsolo Mansion, 130 Amorsolo St., San Lorenzo Village, Makati City.

THE FACTS

The Court in Division narrated the factual antecedents, as follows:

"On October 21, 2011, petitioner received a *Letter of Authority* (LOA) No. 046-2011-00000460 dated October 12, 2011 issued by the OIC-Regional Director of Revenue Region No. 7 for the period from January 1, 2010 to December 31, 2010. The said LOA provides that the bearers thereof, Revenue Officer Jezzebelle Bercasio (RO Bercasio) and Group Supervisor Marinelia German, are authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1,

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[2] EB Docket, Volume II, Decision dated July 13, 2020, pp. 855-873.
[3] EB Docket, Volume II, Resolution dated October 26, 2020. Pp. 848-851.

2010 to December 31, 2010 pursuant to RMO No. 62-2010, Claims for Income Withholding Tax Excess Payments.

On December 2, 2011, petitioner received an *Audit Notice* together with a list of books of accounts and other accounting records to be examined.

Petitioner provided the BIR with a copy of the BIR Ruling No. (DA-JV-023) 178-08. The then Revenue District Officer of RDO No. 46, Atty. Armando F. Tria, in a *Letter* dated January 31, 2013, referred to the BIR Ruling No. (DA-JV-023) 178-08 dated August 28, 2008, which was submitted by petitioner to the BIR in reply to its initial findings noted in the investigation.

On July 18, 2012, petitioner received a Subpoena Duces Tecum issued on July 12, 2012 by the OIC-Chief, Legal Division of Revenue Region No.7, ordering the petitioner to appear on August 9, 2012 before the Chief of the Legal Division and to bring and submit its books of accounts and other accounting records for the year 2010.

On August, 14, 2012, petitioner sent a letter to the OIC-Chief Legal Division of Revenue Region No. 7, whereby petitioner undertook to submit the documents on or before August 30, 2012. In a letter dated September 12, 2012, petitioner requested for an extension of thirty (30) days within which to submit the documents.

On October 19, 2012, petitioner received a letter dated September 28, 2012 from the Revenue District Officer of RDO No. 46 requesting the petitioner to prepare the records and documents enumerated therein for inspection on October 15, 2012.

On October 19, 2012, petitioner presented to RO Bercasio copies of the Project Investment Agreements (PIAs) covering the following units:

xxx xxx xxx

RO Bercasio acknowledged receipt as shown by the list signed by her on even date.

On October 23, 2012, petitioner received a letter dated October 16, 2012 from the Revenue District Officer of RDO No. 46, reiterating its request to present the records and documents on or before October 22, 2012. The Revenue District Officer also asked for the originals of the Contracts to Sell or the PIAs.

In a letter dated January 17, 2013, petitioner informed RDO No 46, through its Revenue District Officer, that its books of account *(sic)* and other accounting records for the year 2010 are available for inspection on February 11, 2013 to February 13, 2013 at petitioner's office in Makati City.

In a letter dated January 21, 2013, the Revenue District Officer of RDO No. 46 informed petitioner that the assigned examiners will visit petitioner's office on January 29, 2013 to start the audit investigation.

On February 11, 2013, the Revenue Officers appeared at petitioner's office in Makati City. Petitioner provided workspace for the Revenue Officers to examine its and records and books of account *(sic)* and showed all the records requested.

In three separate letters all dated February 12, 2013, petitioner provided a list of the documents that were prepared for the audit investigation, which documents were available when the Revenue Officers visited petitioner's office on February 11, 2013. A copy of the BIR Ruling was provided by the petitioner to the BIR.

On November 6, 2013, petitioner received a letter of even date from the Revenue District Officer of RDO No. 46, Mr. Joseph M. Catapia inviting petitioner for an informal conference on November 14, 2013. Attached to the said letter are Annexes A, B, C, D and E, which supposedly show the details of the deficiency tax assessment.

In a letter dated November 14, 2013, petitioner requested that the informal conference be rescheduled on November 21, 2013.

On December 10, 2013, petitioner received a Preliminary Assessment Notice dated December 9, 2013, together with *Details of Discrepancies.*

On January 10, 2014, petitioner received the following:

1. Assessment Notice dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency income tax in the total amount of ₱18,100,879.44;

2. Assessment Notice dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency VAT in the total amount of ₱39,928,285.99;

3. Assessment Notice dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency withholding tax (on sale of real property) in the total amount of ₱33,733,764.56;

4. Assessment Notice dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of deficiency DST in the amount of ₱3,629,740.27;

5. Assessment Notice dated January 10, 2014 under Demand No. 046-B033-10 for the year 2010, assessing petitioner of compromise penalty in the amount of ₱155,000.00;

6. Formal Letter of Demand dated January 10, 2014 for the alleged deficiency income tax, VAT, withholding tax on sale of property, and DST;

7. Details of Discrepancies (Schedule "I" of the Formal Letter of Demand) for the alleged deficiency income tax, VAT, withholding tax on sale of property, and DST; and

8. Formal Letter of Demand dated January 10, 2014 for the compromise penalty.

In a letter dated January 14, 2014, petitioner requested for a reinvestigation of the results/findings for the alleged deficiency taxes for the year 2010. Petitioner filed its request for reinvestigation on January 15, 2014.

Respondent, through the Regional Director of Revenue Region No. 7, Mr. Alfredo V. Misajon, and the Chief of the Collection Division, Ms. Alice S. A. Gonzales issued a Preliminary Collection Letter dated June 17, 2014, which provides that several notices were sent to petitioner's office for the collection of its internal revenue tax liability/ies described hereunder. The supposed deficiency taxes are as follows:

xxx xxx xxx

Petitioner received the Preliminary Collection Letter on July 2, 2014.

On July 10, 2014, petitioner filed a letter dated July 8, 2014 before the Regional Director of BIR Revenue Region No. 7 manifesting its protest against the issuance of the

Preliminary Collection Letter on the ground of lack of due process.

On April 8, 2016, petitioner, through counsel, wrote a letter to the Arrears Management Division of Revenue Region No. 7 requesting that the Warrant of Garnishment served on Banco De Oro- Calbayog, Mandaluyong Branch and/or on such other banks that may have received the same be lifted, as having been issued prematurely and/or without basis.

In a letter dated April 26, 2016, petitioner, through counsel requested the Collection Division of Revenue Region No. 7 or any other appropriate division or department thereof to respond to petitioner's letter dated July 8, 2014, as no response thereto has yet been received by the petitioner.

On May 5, 2016, petitioner, through counsel, sent a letter of even date to the Regional Director of Revenue Region No. 7 informing him that petitioner has yet to receive a response to its letter dated July 8, 2014 and requesting that the matter be referred back to RDO No. 46 for reinvestigation.

In a Memorandum dated July 18, 2016 signed by Ramon Bautista for the Chief of the Collection Division, it is stated:

> "Since the WDL is un-served and no Final Notice before Seizure was issued and served to the taxpayer, the undersigned respectfully recommend that the docket be referred back to Unit 1 for issuance of FNBS and to complete the procedure as prescribed in the collection manual."

On May 10, 2017, the respondent, through the Chief of the Collection Division and the Head of the Arrears Management Section of Revenue Region No. 7, served a copy of a Demand Letter dated May 2, 2017 addressed to the Chairman/President of the petitioner, Mr. Ruben C. Tiu, to his residence. On the same date, the other directors of the petitioner were likewise served with copies of the same Demand Letter to their residences as well. The Demand Letter provides:

xxx xxx xxx

On May 24, 2017, petitioner filed the present Petition for Review. The case was initially raffled to this Court's First Division."

After trial, the Second Division rendered the assailed Decision, which dismissed the Petition for Review for lack of jurisdiction.

On July 30, 2020, petitioner filed via electronic mail a Motion for Reconsideration (Re: Decision promulgated on 13 July 2020).

On October 26, 2020, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit.

On November 16, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review with the Court *En Banc* requesting for an additional period of fifteen (15) days or until December 3, 2020 within which to file its Petition for Review.

In a Minute Resolution dated November 18, 2020, the Court En Banc granted petitioner's Motion for Extension of Time to File Petition for Review and gave petitioner until December 3, 2020 within which to file its Petition for Review.[4]

On December 3, 2020, petitioner filed the instant Petition for Review with the Court *En Banc.*

On January 20, 2021, the Court issued a Resolution directing petitioner to submit the following documents, within five (5) days from notice, to wit:

1. MCLE Compliance No. VI. of Atty. Jose A. Bernas;

2. Verification and Certification of Non-Forum Shopping; and

3. Affidavit of Service.

On February 5, 2021, petitioner filed its Compliance (Re: Resolution promulgated on 20 January 2021) attaching therewith the documents requested by the Court in its Resolution dated January 20, 2021 which was deemed sufficient compliance by the Court in its Resolution dated

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[4] EB Docket,Volume I, page 5.

March 2, 2021. In this same Resolution, the Court ordered respondent to file her comment on petitioner's Petition for Review within ten (10) days from notice.

On March 18, 2021, respondent filed a Motion for Extension of Time to File Comment via registered mail requesting for an additional period of ten (10) days from March 18, 2021 or until March 28, 2021 within which to submit a comment. This was followed by respondent's Motion to Admit Attached Comment /Opposition to Petition for Review with attached Comment/Opposition to Petitioner's Petition for Review Dated 03 December 2020 filed on May 24, 2021.

Meanwhile, petitioner filed a Motion to Refer the Case to Mediation on June 29, 2021.

In a Resolution dated October 7, 2021, the Court granted respondent's Motion to Admit Attached Comment and admitted the attached Comment/Opposition to Petitioner's Petition for Review Dated 03 December 2020. The Court in this same Resolution denied petitioner's Motion to Refer the Case to Mediation on the ground that the case involves the issue of jurisdiction of the Court of Tax Appeals (CTA) and may not be the proper subject of mediation pursuant to the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*. The Court then submitted the above captioned case for decision.

On March 28, 2022, petitioner filed a Motion to Defer Proceedings with Manifestation requesting that the proceedings of the case be deferred pending the approval of its application/proposal for an amicable settlement with respondent on its alleged deficiency tax assessment for taxable year 2010.

On June 10, 2022, the Court denied petitioner's Motion to Defer Proceedings with Manifestation and reiterated the Resolution of the Court dated October 7, 2021 submitting the above-captioned case for decision.

On July 8, 2022, petitioner filed via registered mail a Motion for Reconsideration reiterating its request that it be given an opportunity to amicably settle the deficiency tax assessment for taxable year 2010 as it alleges that it had

already submitted a proposal to respondent for a possible compromise settlement.

On September 9, 2022, the Court issued a Resolution denying petitioner's Motion for Reconsideration and correspondingly, reiterated its Resolution dated October 7, 2021 submitting the case for decision.

THE ISSUES

Petitioner submits the following issues for the resolution of the Court *En Banc:*

"I.

Whether a void act, in general, produces any legal effects.

II.

Whether a void assessment, in particular, produces any legal effects and becomes unappealable

III.

Whether the deficiency tax assessment is a good faith assessment, it being based on an unauthorized revocation of a BIR Ruling and retroactive application of the assumed revocation

IV.

Whether the Court of Tax Appeals, as a court of special jurisdiction can take cognizance of matters that relate to the validity or invalidity of an assessment as "other matters" under Section 7 (A) (1) or RA No. 1125 and other Section 3 (A) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals.

V.

If it is assumed that the Preliminary Collection Letter is the final decision, whether the Court of Tax Appeals may nevertheless exercise jurisdiction under Article VII of the Constitution which obliges the courts to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

VI.

Whether the preliminary collection letter dated 17 June 2014 was the respondent's decision that triggered the period to appeal, if *(sic)* did not contain they key words or phrases like "last opportunity" and "demand" as used in jurisprudence.

VII.

Whether the subsequent demand letter dated 02 May 2017 from the Bureau of Internal Revenue ("BIR") supports a conclusion that the preliminary collection letter is not the decision that could have been the subject of an appeal.

VIII.

Whether the failure to state the revocation of the BIR Ruling as basis for the assessment nevertheless produces any adverse effect on the petitioner.

IX.

Whether the Court may ignore the computational or other substantive mistakes in the assessment which are apparent on the records: 1. Assessed rent; 2. Expenses exceeded revenue, precluding income tax liability; 3. Withholding tax not due from petitioner as alleged seller; and 4. BIR Ruling was ignored without valid justification."

Petitioner's arguments

We shall first delve on the collective arguments of petitioner against the conclusion of the Court in Division on its lack of jurisdiction.

Petitioner avers that the Court may take cognizance of matters that relate to the validity or invalidity of an assessment under "other matters"' as provided in Section 7 (a) (1) of Republic Act (RA) No. 1125, as amended by RA 9282 in relation to Section 3 (a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). This hypothesis then negates the issue of belated filing of a protest as the Court may still rule on the validity or invalidity of an assessment *sans* a timely filed protest. Petitioner expounded on the term "other matters" as broad enough to cover other cases other than a disputed assessment such as the validity of a warrant of distraint and levy (WDL), the authority of the Bureau of

Internal Revenue's (BIR) decision to compromise and also to determine the validity of a deficiency tax assessment as in the instant case. Petitioner emphasizes that what is at issue in the instant case is the deficiency tax assessments' lack of factual basis, being merely based on assumptions, including but not limited to the assumed and unauthorized revocation of a BIR Ruling which respondent allegedly applied retroactively to its prejudice and in alleged disregard of Section 246 of the 1997 National Internal Revenue Code (NIRC), as amended.

Petitioner alternatively argues that even if the Preliminary Collection Letter (PCL) shall be considered as the final decision appealable to the Court, Article VIII of the 1987 Philippine Constitution obliges the courts to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch of the government including the BIR.

In confronting head on the Court's rationale in dismissing the case, petitioner directly avers that the PCL is not the "final decision" contemplated by law to be appealable to the Court and that the receipt thereof did not trigger the 30-day period to file an appeal. Petitioner asserts that the PCL does not contain any statement categorically upholding the validity of the assessment which is a prerequisite for an assessment to attain finality. Petitioner adds that the PCL does not qualify as a final decision appealable to the Court because it did not contain a statement nor recognize or refer to its protest dated January 24, 2014. In contrast, petitioner describes the BIR's Demand Letter as having the qualities of a final decision as evidenced by the words "last opportunity" and the word "demand" indicated in bold letters, thus, it maintains that it correctly treated the same as the final decision appealable to the Court instead of the PCL.

As to the substantive aspects of the assessment issued by respondent, petitioner considers the findings therein as lacking legal support as it was based on the unfounded view of respondent that BIR Ruling No. (DA-JV-023) 178-08 has been revoked and an equally unfounded conclusion that the investments received amounted to sales, hence taxable. Even granting that said BIR Ruling No. (DA-JV-023) 178-08 had been revoked, petitioner argues that this should not have been retroactively applied as this is prejudicial to its interests pursuant to Section 246 of the 1997 NIRC, as amended.

Petitioner further maintains that its right to due process was violated because the Preliminary Assessment Notice (PAN), the Final Assessment Notice (FAN) with Details of Discrepancies did not provide adequate details or sufficient basis for the findings contained therein and neither did they mention the said BIR Ruling and why it was ignored.

Respondent's counter-arguments

In its Comment/Opposition, respondent agrees with the Court in Division when it ruled that the assessments became final, executory and demandable because no valid protest was filed by petitioner. The alleged paucity of the applicable information such as the facts, the law, rules and regulations to support petitioner's request for re-investigation made such protest *pro forma* and was rightfully treated by the Court in Division as not having been filed. In addition, respondent attacks the validity of the protest for the alleged failure of the petitioner to submit the relevant documents to support the same within the period provided under Section 228 of the 1997 NIRC, as amended. Being *pro-forma,* the tax deficiency assessments became final, executory and demandable.

Respondent also concurs with the position of the Court in Division when it held that the PCL constitutes the final decision appealable to the Court because it contains a reiteration of the tax deficiency assessments due from petitioner accompanied by a categorical demand for payment of the same which signifies the "final action" of respondent on the disputed assessment which is already appealable to the Court. To recall, the PCL was received by the petitioner on July 4, 2014 and it was only on May 24, 2017 that it filed an appeal with the Court in Division which respondent says was beyond the thirty-day period to appeal. Not having any jurisdiction over the instant case, respondent contends that the Court cannot rule on the validity of the assessments issued.

RULING OF THE COURT

We deny the Petition for Review and affirm the Court's lack of jurisdiction to take cognizance of the instant case.

The filing of a protest against a tax deficiency assessments is governed by Section 228 of the 1997 NIRC, as amended, and we quote:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> 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."** (Emphasis supplied)

The provision on filing of protests and decisions on said protests is implemented by Section 3.1.4 of Revenue Regulations (RR) No. 18-2013 amending RR 12-99, and we quote portions thereof, thus:

> "Section 3.1.4. – Disputed Assessment. – xxx xxx xxx
>
> xxx xxx xxx

> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized and representative shall be entertained by the Commissioner."

It is important at this point to carefully scrutinize the undisputed factual narratives of the instant case to clarify the Court in Division's conclusion of lack of jurisdiction.

Records show that petitioner received a PAN on December 10, 2013 containing the findings of various tax deficiencies for taxable year 2010.

On January 10, 2014, petitioner then received several FANs for these alleged deficiency taxes for taxable year 2010.

Petitioner filed a protest in the nature of a request for reinvestigation on January 15, 2014.

In response, the Regional Director of Revenue Region (RR) No. 7, Alfredo Misajon and Chief of the Collection Division, Ms. Alice Gonzales issued a PCL dated June 14, 2014 which petitioner received on July 2, 2014.

Petitioner then filed a letter dated July 8, 2014 on July 10, 2014 manifesting its protest against the PCL on the ground of lack of due process.

After nearly two years or on April 26, 2016, petitioner followed up its "protest" against the PCL in a letter addressed to the Collection Division of RR No. 7 or any other appropriate division or department for a response to its letter dated July 8, 2014.

The Court in Division in the assailed Decision, ruled that petitioner should have filed an appeal with the Court of Tax Appeals (the "Court") within thirty (30) days from the date it received the PCL, and we quote a portion of said Decision, to wit:

> "Counting thirty (30) days from petitioner's receipt of the PCL on July 2, 2014, petitioner had until August 1, 2014 within which to either file an appeal before this Court or to file a request for reconsideration before the Commissioner himself. While it appears that petitioner filed a protest-letter against the PCL on July 10, 2014, the same was improperly made because it was filed before the Regional Director and not before the Commissioner of Internal Revenue, as required by the rules."

The Court in Division then considered the PCL as the "final decision" appealable to this Court and that petitioner's failure to file an appeal within thirty days from receipt thereof, rendered the FANs final, executory and demandable thereby depriving the Court of the requisite jurisdiction to take cognizance of the same.

We agree with the findings of the Court in Division.

While the concept of finality of decisions is admittedly a contentious issue especially in the absence of a definitive and categorical action on the part of respondent, the Supreme Court has, in a myriad of relevant cases, treated and defined, albeit in different forms, acts that may constitute as a denial or rejection of the protest filed by a taxpayer. In *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.,*[5] the High Court considered the issuance of a warrant of distraint and/or levy as an "implied denial" appealable to the Court while in the case of *Commissioner of Internal Revenue vs. Isabela Cultural Corporation,*[6] the Supreme Court deemed the issuance of the Final Notice Before Seizure (FNBS) as having the tenor of finality which effectively rejected or denied the taxpayer's protest and may already be appealable to this Court. Amidst the differing acts and documents that may be considered as a final decision, the Supreme Court has time and again reminded the Commissioner of Internal Revenue and/or his duly authorized representatives to "always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment."[7] The purpose of such an admonition or reminder is two-fold, both on the part of the taxpayer and the government and this was elucidated by the Supreme Court in

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[5] G.R. No 225809, March 17, 2021.
[6] G.R. No. 135210, July 11, 2001.
[7] *Surigao Electric Co., Inc. vs. The Honorable CTA and CIR*, G.R. No. L-25289, June 28, 1974 and reiterated in *Advertising Associates Inc., vs. Court of Appeals and the CIR*, G.R. No. 59758, December 26, 1984 and *CIR vs. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.

the case of *Oceanic Wireless Network, Inc. vs. CIR, CTA and the Court of Appeals,*[8] and we quote as follows:

> " xxx xxx xxx On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. xxx xxx xxx"
>
> **The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment – and, consequently the collection of the amount demanded as taxes-by repeated requests for recomputation and reconsideration.**" (emphasis supplied)

After taking a second look at the contents of the PCL, we consider the latter as having passed the standard set by the Supreme Court as having the tone of finality. The PCL made a clear demand for payment of the alleged tax liabilities of petitioner and capped by a final statement, to wit:

> "Our records show that several notices were sent to your office for the collection of your internal revenue tax liability/ies described hereunder, which remain unpaid/unsettled to date:
>
> xxx xxx xxx
>
> In order to avoid the accumulation of interest and surcharge, it is requested that you pay the tax liabilities within ten (10) days from receipt hereof,
>
> xxx xxx xxx
>
> **Otherwise, we shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice.**" (emphasis supplied)

The categorical demand for payment coupled with the threat to pursue collection of the alleged tax liabilities if payment is not made, characterize the finality of the decision of the representative of the respondent which to the mind of this Court, constitutes a final decision. The failure of petitioner to avail of the remedy of appeal within the thirty-day period

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[8] G.R. No. 148380, December 9, 2005.

from receipt of the PCL made the FANs final, executory and demandable. We find that the Court in Division correctly dismissed the Petition for Review for lack of jurisdiction. The conclusion of lack of jurisdiction due to the finality of an assessment has been recognized by the Supreme Court in the case of *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue,*[9] and we quote:

> "**The thirty-day period prescribed by Section 11 of Republic Act 1125, as amended**, within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the tax court, is a **jurisdictional requirement,** and **the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and renders the questioned decision final and executory.**" (emphases supplied)

On petitioner's argument that the invalidity of an assessment may be subsumed under "other matters' within the jurisdiction of the Court, we find this to be without merit because clearly, this case falls outside the realm of the so-called "other matters" being a disputed assessment and supported by a decision of the representative of respondent. The Supreme Court in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*[10] is on point when it prohibited a taxpayer from interposing other defenses in the face of a final and executory assessment, to wit:

> xxx xxx xxx "Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period, rendered the disputed assessment final, executory and demandable, **thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.**"

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 13, 2020 and the assailed Resolution dated October 26, 2020 all promulgated by the Second Division of this Court, are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[9] G.R. No. L-25289, June 28, 1974.
[10] G.R. No. 168498, April 24, 2007.

WE CONCUR:

(See Concurring Opinion, with Obiter Dictum)
ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

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Petitioner,

-versus-

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MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, JJ.

PROMULGATED OCT 05 2022 10:45 am

x- x

CONCURRING OPINION
(with *Obiter Dictum*)

DEL ROSARIO, P.J.:

I concur in the denial of the Petition for Review filed by JTKC Land, Inc. (JTKC). As elucidated in the ponencia, the Court in Division correctly dismissed the Petition for Review filed by JTKC in CTA Case No. 9597 for lack of jurisdiction.

Nonetheless, I wish to point out certain infirmities in the procedure adopted by the Bureau of Internal Revenue (BIR) in issuing the Preliminary Collection Letter (PCL) dated June 17, 2014 *sans* resolving petitioner's protest on the final assessment notices that was filed before the BIR.

Revenue Regulations (RR) No. 12-99, as amended, provide that the decision of the Commissioner of Internal Revenue (CIR) or the

CIR's duly authorized representative on a taxpayer's protest shall state **(i) the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, and (ii) that the same is his final decision.**

In the present case, after petitioner filed its Letter dated January 14, 2014 by way of protest to the final assessment notices issued by the BIR, no administrative decision was actually issued by the CIR or the CIR's duly authorized representative. Instead, Preliminary Collection Letter (PCL) dated June 17, 2014 was issued by the Regional Director of Revenue Region No. 7. Invoking its right to due process, petitioner questioned the PCL by filing a Letter dated July 8, 2014 before the Office of the Regional Director.

As the PCL has reiterated petitioner's tax liabilities and requested for the payment of the same with a caveat that if petitioner failed to pay the same, respondent would be constrained to serve and execute the administrative summary remedies to enforce the collection of petitioner's tax liabilities, the Court in Division treated the PCL as respondent's final decision on petitioner's protest.

The Court in Division cited in particular *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue,*[1] *Commissioner of Internal Revenue v. Isabela Cultural Corporation,*[2] *Commissioner of Internal Revenue v. Ayala Securities Corporation,*[3] and *Surigao Electric Co., Inc. v. The Honorable Court of Tax Appeals*[4] which in *esse* declared that a demand letter for payment of delinquent taxes may be considered a final decision on a disputed or protested assessment appealable to this Court.

By way of *obiter*, I submit that the doctrine in the aforementioned cases should be reexamined as a mere perusal of the contents of the PCL would show that it can hardly be considered as respondent's final decision on the protest.

For one, a PCL is a step to enforce collection of a final and executory assessment. Pending issuance of an administrative decision on its disputed assessment, not every taxpayer would know that the PCL actually serves as the final decision on its protest. Thus, in most cases, taxpayers go back to the BIR to inform the latter that they have

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[1] G.R. No. 148380, December 9, 2005, 477 SCRA 205, 211.
[2] G.R. No. 135210, July 11, 2001, 361 SCRA 71, 77.
[3] G.R. No. L-29485, March 31, 1976, 70 SCRA 204, 209.
[4] G.R. No. L-25289, June 28, 1974, 57 SCRA 523, 525.

pending protests which should be acted upon prior to the issuance of a PCL.

For another, the PCL does not state the facts, the applicable law, rules and regulations, or jurisprudence upon which the denial of the protest is based. These requirements are mandatory otherwise, the same cannot be considered as a valid decision on a disputed assessment.

The issuance of a PCL instead of a decision on a disputed assessment is akin to the issuance of a writ of execution pending resolution of a motion for reconsideration of an assailed court decision. When a writ of execution is issued before the motion for reconsideration is resolved, the procedure is not only irregular, but more importantly, the right of the movant to due process is violated.

In *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue,*[5] the Supreme Court emphasized the rationale behind the requirement to state in clear and categorical language that the CIR's letter is the final decision on the protest, *viz.*:

> "Prescinding from all the foregoing, **we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment**, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this *indicium* indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, **the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues**. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer **grope in the dark and speculate as to which action constitutes the decision appealable to the tax court**. Of greater import, **this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action**." (Boldfacing and underscoring supplied)

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

In the interest of justice and fair play, **before issuing a preliminary collection letter or taking steps for the collection of taxes that are subject matter of a disputed assessment**, the CIR or his duly authorized representative should **first resolve** the protest through an administrative decision on disputed assessment, categorically stating therein **the facts, the applicable law, rules and regulations, or jurisprudence upon which the denial is based and stating that the same is the final decision on the protest.**

Sans addressing the grounds relied upon by the taxpayer in its protest, collection of deficiency taxes is premature, irregular and improper.

In fact, there is even a jurisprudence that when a final assessment notice is issued without the BIR addressing the grounds relied upon in protesting a preliminary assessment notice, the final assessment notice thereby becomes void for being violative of the taxpayer's right to due process. Said the Supreme Court in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing Inc. vs. Commissioner of Internal Revenue:*[6]

> **"The facts demonstrate that Avon was deprived of due process.** It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **did not even comment or address the defenses and documents submitted by Avon**. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> **First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.**
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> **Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the**

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[6] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

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The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.

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In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own

> rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void**." *(Boldfacing and underscoring supplied)*

Following the rationale behind *Avon*, should not the BIR also address the grounds relied upon by the taxpayer in protesting a final assessment notice lest the taxpayer's right would likewise be violated?

The foregoing disquisition notwithstanding, I CONCUR in the *ponencia* in view of the existing doctrines on the matter.

ROMAN G. DEL ROSARIO
Presiding Justice