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SECOND DIVISION

[G.R. No. 231238. June 20, 2022]

LIGHT RAIL TRANSIT AUTHORITY, *Petitioner*, *v.* **BUREAU OF INTERNAL REVENUE, represented by the COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

D E C I S I O N

LEONEN, *J.*:

In cases of inaction by the Commissioner of Internal Revenue on appeals of denials of protest, the taxpayer has the option to await the Commissioner's decision on appeal before filing a petition for review before the Court of Tax Appeals. The petition for review can be filed notwithstanding the expiration of the 180-day period for the Commissioner to resolve protests of assessments.

This Court resolves the Petition for Review on *Certiorari*[1] filed by the Light Rail Transit Authority (Light Rail Transit), assailing the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc* that affirmed the Court of Tax Appeals Third Division's dismissal[4] of the Light Rail Transit's Petition for Review for lack of jurisdiction.

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1 *Rollo*, pp. 9–26.

2 Id. at 28–41. The October 05, 2016 Decision in CTA EB No. 1325 was penned by Associate Justice Caesar A. Casanova and was concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals, Quezon City.

3 Id. at 48–56.

4 Id. at 92–98 and 100–104. The February 2, 2015 and May 19, 2015 Resolutions in CTA EB No. 8891 were penned by Associate Justice Lovell R. Bautista and was concurred in by Associate Justice Ma. Belen M. Ringpis-Liban. Associate Justice Esperanza R. Fabon-Victorino was on leave when the February 2, 2015 Resolution was issued and, consequently, took no part

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Based on the submissions to this Court, the Commissioner of Internal Revenue (the Commissioner), through the Regional Director of Revenue Region No. 8 (Regional Director), issued a Preliminary Assessment Notice[5] to the Light Rail Transit dated December 8, 2008, for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and withholding of value-added tax for the year 2003, the total amount being ₱3,521,915.61. Light Rail Transit filed a protest[6] to the Preliminary Assessment Notice.

On December 24, 2008, the Regional Director issued the Formal Assessment Notice,[7] and the alleged deficiency taxes, inclusive of interests, amounted to ₱3,555,982.19. The Light Rail Transit likewise protested the Formal Assessment Notice on January 7, 2009.[8]

On April 1, 2011, the Regional Director issued the Final Decision on Disputed Assessment,[9] denying the Light Rail Transit's protest to the Formal Assessment Notice. The Light Rail Transit received a copy of the Final Decision on Disputed Assessment on April 26, 2011.[10]

On May 6, 2011, the Light Rail Transit appealed[11] the Commissioner's Final Decision on Disputed Assessment.

Pending resolution of the Light Rail Transit's appeal to the Commissioner, the Officer-in-Charge Revenue District Officer of Revenue Region No. 8, Revenue District Office No. 51 (Revenue District Officer) issued a Preliminary Collection Letter[12] on

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in the May 19, 2015 Resolution of the CTA Third Division of the Court of Tax Appeals, Quezon City.

5 Id. at 60–64.

6 Id. at 65–68.

7 Id. at 69–73.

8 Id. at 29.

9 Id. at 74–77.

10 Id. at 29.

11 Id. at 78.

12 Id. at 80.

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September 20, 2011. There, the Revenue District Officer demanded payment of Light Rail Transit's alleged tax deficiencies totaling ₱9,279,619.86 within 10 days from receipt of the Collection Letter. The Light Rail Transit received a copy of the Preliminary Collection Letter two days later, or on September 22, 2011.[13]

On September 30, 2011, the Light Rail Transit informed the Regional Director that it had filed an appeal with the Commissioner.[14] Still, on November 23, 2011, the Revenue District Officer issued a Final Notice Before Seizure,[15] giving the Light Rail Transit 10 days from receipt within which to settle its tax liabilities. In its February 3, 2012, Letter[16] to the Revenue District Office, the Light Rail Transit reiterated that its appeal was still pending with the Commissioner and that "[it] shall act [on] the matter as soon as [it] receive[s] the Commissioner's decision on [its] appeal."[17]

On March 5, 2012, the Revenue District Officer issued a Warrant of Distraint and/or Levy,[18] which the Light Rail Transit received on May 17, 2012. This prompted the Light Rail Transit to seek reconsideration of the issuance of the Warrant of Distraint and/or Levy and their tax liability.[19]

Through an April 4, 2013 Letter,[20] the Revenue District Officer forwarded the docket of the case to a Revenue Officer with the instruction to pursue the reinvestigation of the Light Rail Transit's tax liabilities. The Light Rail Transit was then ordered to present all relevant documents within 60 days for proper re-evaluation of its case.

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13 Id. at 30.

14 Id. at 81.

15 Id. at 82.

16 Id. at 83.

17 Id.

18 Id. at 84.

19 Id. at 85.

20 Id. at 86.

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However, in a June 9, 2014 Letter,[21] the Revenue District Officer dropped the reinvestigation of Light Rail Transit's case for failure to submit required documents. The Revenue District Officer thus declared the findings in the Final Decision on Disputed Assessment final and appealable. The Light Rail Transit received a copy of the June 9, 2014 Letter on June 17, 2014.[22]

Then, in a June 30, 2014 Letter,[23] the Regional Director, acting on the May 6, 2011 appeal of the Light Rail Transit to the Office of the Commissioner, again declared the case final, executory, and demandable for Light Rail Transit's failure to submit the required documents. The Light Rail Transit received a copy of the June 30, 2014 Letter on August 12, 2014.[24]

On September 11, 2014, the Light Rail Transit filed a Petition for Review before the Court of Tax Appeals.[25] Instead of filing an Answer, the Bureau of Internal Revenue moved to dismiss the Petition on the ground of lack of jurisdiction.[26] The Bureau of Internal Revenue argued that the reckoning point for filing the Petition for Review was on March 17, 2012, the day the Light Rail Transit received a copy of the Warrant of Distraint and/or Levy, not on August 12, 2014 when the Light Rail Transit received the June 30, 2014 Letter from the Regional Director denying its request for reinvestigation.[27]

For its part, the Light Rail Transit contended that the reckoning point for filing the Petition for Review was on August 12, 2014, the day it received a copy of the June 30, 2014 Letter.[28]

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[21] Id. at 88.

[22] Id. at 31.

[23] Id. at 90.

[24] Id. at 31.

[25] Id.

[26] Id. at 92.

[27] Id.

[28] Id. at 92–93.

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In its February 2, 2015 Resolution,[29] the Court of Tax Appeals Third Division agreed with the Bureau of Internal Revenue and granted its Motion to Dismiss for lack of jurisdiction. According to the Court of Tax Appeals Third Division, the Light Rail Transit did not protest the Formal Assessment Notice, rendering the assessment final and unappealable. Consequently, the Court of Tax Appeals had no jurisdiction over the cognizance of the Petition for Review.[30] The dispositive portion of the February 2, 2015 Resolution states:

> **WHEREFORE**, the "Motion to Dismiss," is hereby **GRANTED**. Accordingly, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**[31] (Emphasis in the original)

The Light Rail Transit filed a Motion for Reconsideration and Motion to Quash Warrant of Distraint and/or Levy.[32] It alleged that it actually filed a protest to the Final Assessment Notice, and it only inadvertently failed to attach a copy of the protest to its Petition for Review.[33] Additionally, it maintained that the reckoning point for filing the Petition for Review was on August 12, 2014 when it received the June 30, 2014 Letter from the Regional Director as the Commissioner's duly authorized representative that denied its May 6, 2011 appeal.[34] Lastly, the Light Rail Transit argued that the Bureau of Internal Revenue could not enforce the Warrant of Distraint and/or Levy against it, an attached agency of the government, while the case is pending before the Court of Tax Appeals.[35]

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[29] Id. at 92–98.

[30] Id. at 97.

[31] Id. at 98.

[32] Id. at 100.

[33] Id.

[34] Id.

[35] Id. at 101.

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The Court of Tax Appeals Third Division was not persuaded. In its May 19, 2015 Resolution,[36] it denied the Light Rail Transit's Motion for Reconsideration and Motion to Quash Warrant of Distraint and/or Levy.

The Court of Tax Appeals Third Division held that despite the filing of the protest to the Formal Assessment Notice, the assessment against Light Rail Transit had become final. Citing *Commissioner of Internal Revenue v. Isabela Cultural Corporation*,[37] the Third Division held that the Final Notice Before Seizure is the decision properly appealable to the Court of Tax Appeals, it being the Commissioner of Internal Revenue's "final act regarding the request for reconsideration"[38] and that which granted the Light Rail Transit the "last opportunity" to pay its deficiency taxes.[39] As such, the Light Rail Transit should have filed its Petition for Review before the Court of Tax Appeals within 30 days from receipt of the copy of the Final Notice Before Seizure.[40]

For failing to appeal the Final Notice Before Seizure to the Court of Tax Appeals within the reglementary period, the assessment had already attained finality according to the Third Division.[41]

The dispositive portion of the May 19, 2015 Resolution provides:

> **WHEREFORE**, from the foregoing, the "Omnibus Motion (Motion for Reconsideration on the Decision *[sic]* dated 2 February 2015 and Motion to quash Warrant Distraint and Levy dated 12 February 2015)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[42] (Emphasis in the original)

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[36] Id. at 100–104.

[37] 413 Phil. 376 (2001) [Per J. Panganiban, Third Division].

[38] *Rollo*, p. 103.

[39] Id.

[40] Id.

[41] Id.

[42] Id.

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Undeterred, the Light Rail Transit filed a Petition for Review before the Court of Tax Appeals *En Banc*, which petition was nevertheless denied in the October 5, 2016 Decision[43] for lack of merit.

The Court of Tax Appeals *En Banc* emphasized that it may only take cognizance of matters clearly within its jurisdiction, being a court of special jurisdiction.[44] Specifically, before it can take cognizance of an appeal, there must first be a disputed assessment, followed by a ruling on the protest, either by the Commissioner of Internal Revenue or one of their duly authorized representatives.[45] In case the ruling on the protest was rendered by a duly authorized representative, Section 3.1.5. of Revenue Regulations No. 12-99 gives the taxpayer the option to either: (1) elevate the protest to the Commissioner upon receipt of the denial of protest by the authorized representative; or (2) directly appeal such denial to the Court of Tax Appeals. In both cases, the taxpayer has 30 days from receipt to elevate the protest or directly appeal its denial.[46]

Still citing Section 3.1.5. of Revenue Regulations No. 12-99,[47] the Court of Tax Appeals considered the "disputed assessment" the Final Decision on Disputed Assessment. As allowed under Section 3.1.5, the Light Rail Transit elevated the protest to the Commissioner of Internal Revenue. The Final Decision on Disputed Assessment said "cannot yet be considered as final, executory and demandable."[48]

This finding notwithstanding, the Court of Tax Appeals *En Banc* nevertheless reckoned the 30-day period for filing a petition

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[43] Id. at 28–41.

[44] Id. at 34.

[45] Id. at 35.

[46] Id. at 36–37.

[47] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of 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 dated September 6, 1999.

[48] *Rollo*, p. 37

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for review from April 26, 2011, the day the Light Rail Transit received a copy of the Final Decision on Disputed Assessment, not on the day the Light Rail Transit received a copy of the decision of the Commissioner of Internal Revenue on the appeal.[49] The Court of Tax Appeals *En Banc* reasoned that the elevation of the protest to the Commissioner under Section 3.1.5. of Revenue Regulations No. 12-99 did not, in any way, extend the 180-day period for the Commissioner or their authorized representatives to decide a protest under Section 228 of the Tax Code.[50] And since the Light Rail Transit filed the Petition for Review before the Court of Tax Appeals on September 11, 2014, years beyond the thirtieth day from April 26, 2011, the Petition for Review was deemed belatedly filed, and the assessment final, demandable, and executory.[51] Consequently, the Court of Tax Appeals may no longer take cognizance of the Petition for Review.

The dispositive portion of the Court of Tax Appeals *En Banc*'s October 5, 2016 Decision reads:

> **WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated February 2, 2015 and May 19, 2015, respectively, in CTA Case No. 8891 are both **AFFIRMED**.
>
> **SO ORDERED.**[52] (Emphasis in the original)

The Court of Tax Appeals Presiding Justice Roman G. Del Rosario (Presiding Justice Del Rosario) registered a Concurring Opinion.[53] While agreeing that the Court of Tax Appeals had no jurisdiction over the Light Rail Transit's Petition for Review, he was of the view that the Petition was "either prematurely filed or time-barred,"[54] not belatedly filed.

According to Presiding Justice Del Rosario, the Light Rail Transit prematurely filed its Petition for Review because the

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[49] Id. at 39.

[50] Id.

[51] Id.

[52] Id. at 40.

[53] Id. at 42–47.

[54] Id. at 44.

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Commissioner had not yet decided on its appeal on the denial of its protest when it filed the Petition for Review.[55] On the other hand, if the Warrant of Distraint and/or Levy is considered the decision of the Commissioner on the Light Rail Transit's appeal, this would result in a time-barred petition for review because the Light Rail Transit should have filed the petition not later than June 16, 2012—the 30th day from receipt of the Warrant of Distraint and/or Levy.[56]

Moving for reconsideration, the Light Rail Transit argued that the Bureau of Internal Revenue's right to assess its deficiency taxes had long prescribed.[57] The Light Rail Transit emphasized that the Preliminary Assessment Notice was issued on December 8, 2008, more than four years after filing its 2003 income tax return.[58] It insisted that the Court of Tax Appeals has jurisdiction over its Petition for Review since the issue of prescription falls under "other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue."[59]

In its April 11, 2017 Resolution,[60] the Court of Tax Appeals *En Banc* denied the Light Rail Transit's Motion for Reconsideration. In resolving the prescription argument, the Court of Tax Appeals *En Banc* alluded to a Waiver of Defense of Prescription signed by Light Rail Transit on September 13, 2006.[61] Therein, the Light Rail Transit agreed to extend the period of prescription for assessment of 2003 deficiency taxes up to December 31, 2008. Considering that the Preliminary Assessment Notice was issued on December 8, 2008, well within the extended prescriptive period, the Court of Tax Appeals *En Banc* held that the Bureau of Internal Revenue's

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[55] Id. at 44–46.

[56] Id. at 46–47.

[57] Id. at 48.

[58] Id. at 49.

[59] Id.

[60] Id. at 48–56.

[61] Id. at 51.

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right to assess Light Rail Transit for 2003 deficiency taxes had not yet prescribed when it issued the Preliminary Assessment Notice.[62]

The Court of Tax Appeals *En Banc* added that the Light Rail Transit's insistence on it having jurisdiction to resolve the Petition for Review to resolve the issue of prescription is "[only to] circumvent the unappealable character of [the] assessment,"[63] "[a] ruse of assailing not the assessment itself but the adjuncts of its validity."[64] Still, by failing to file the Petition for Review within the required period, the Court of Tax Appeals *En Banc* held that the Light Rail Transit had lost its remedy of appeal to the Court of Tax Appeals and the deficiency tax assessments have attained finality.

The dispositive portion of the Court of Tax Appeals *En Banc*'s April 11, 2017 Resolution reads:

WHEREFORE, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.[65] (Emphasis in the original)

The Light Rail Transit filed its Petition for Review on *Certiorari*.[66] Upon the directive[67] of this Court, the Bureau of Internal Revenue, through the Office of the Solicitor General, filed its Comment,[68] to which the Light Rail Transit replied.[69]

The Light Rail Transit insists that the Court of Tax Appeals had jurisdiction over its Petition for Review. It argues that, apart from cases involving disputed assessments, the Court of Tax Appeals also has jurisdiction over "other matters arising under the National

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62 Id.

63 Id. at 53.

64 Id.

65 Id. at 56.

66 Id. at 9–26.

67 Id. at 108.

68 Id. at 114–124.

69 Id. at 128–134.

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Internal Revenue Code or other laws, or part of law administered by the Bureau of Internal Revenue." The Petition for Review raised the issue of the validity of the waiver of prescription. According to the Light Rail Transit, this matter is considered to arise under the National Internal Revenue Code. As basis for its argument, the Light Rail Transit cites *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*.[70] In any case, the Light Rail Transit argues that the Bureau of Internal Revenue's right to assess it for deficiency taxes for the year 2003 had already prescribed, the Bureau of Internal Revenue having failed to present in evidence the Waiver of Defense of Prescription it allegedly executed on September 13, 2006.[71]

On the main issue, the Light Rail Transit maintains that it filed its Petition for Review within the reglementary period. The Light Rail Transit asserts that the Regional Director's June 30, 2014 Letter denying the May 6, 2011 appeal should have been considered the Commissioner of Internal Revenue's final decision appealable to the Court of Tax Appeals. The Light Rail Transit emphasizes that pending its appeal with the then Commissioner, a duly authorized representative—the Revenue District Officer Corazon M. Montes—issued a Warrant of Distraint and/or Levy, then granted the Light Rail Transit's request for reconsideration of the Warrant. According to the Light Rail Transit, these actions of the Revenue District Officer made it believe that the Final Decision on Disputed Assessment was not the Commissioner's final decision appealable to the Court of Tax Appeals. It argues that it timely filed the Petition for Review upon its receipt of the June 30, 2014 Letter.[72]

The Bureau of Internal Revenue counters that the Light Rail Transit's Petition for Review was filed out of time as held by the Court of Tax Appeals *En Banc*. It maintained that the Final Decision on Disputed Assessment is the final decision of the Commissioner on the protest to the assessment; consequently, the 30-day period for filing of the appeal should be reckoned from

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[70] 488 Phil. 21 (2004) [Per J. Ynares-Santiago, First Division].

[71] *Rollo*, pp. 20–23.

[72] Id. at 18–20.

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April 26, 2011, the day the Light Rail Transit received a copy of the Final Decision on Disputed Assessment.[73] Even assuming that the Warrant of Distraint and/or Levy is the Commissioner's final decision on the protest, the Light Rail Transit should have filed its petition not later than June 16, 2012, the 30th day from its receipt of the Warrant on May 17, 2012.[74]

Lastly, the Bureau of Internal Revenue notes that the arguments of the Light Rail Transit in its Petition for Review on *Certiorari* are mere rehash of its arguments in its Petition for Review before the Court of Tax Appeals. The Bureau of Internal Revenue thus prays that the Petition for Review on *Certiorari* be denied for lack of merit.[75]

The issues for this Court's resolution are:

First, whether or not the Court of Tax Appeals had jurisdiction over petitioner Light Rail Transit Authority's Petition for Review. Subsumed in this issue is whether or not the Final Decision on the Disputed Assessment is the final decision of the respondent Commissioner of Internal Revenue appealable to the Court of Tax Appeals; and

Second, whether or not the right of respondent Bureau of Internal Revenue to assess the petitioner Light Rail Transit Authority of deficiency taxes for the year 2003 had already prescribed.

The Petition for Review on *Certiorari* is granted.

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Section 7(a) of Republic Act No. 1125, as amended by Republic Act No. 9282,[76] provides for the exclusive appellate jurisdiction of the Court of Tax Appeals, thus:

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[73] Id. at 118–120.

[74] Id. at 121.

[75] Id. at 121–122.

[76] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of

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Sec. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]

"Decisions of the Commissioner in cases involving disputed assessments" mean decisions of the Commissioner on the protest to the assessment,[77] not the assessment itself.[78] The protest may either be a request for reconsideration or a request for reinvestigation,[79] and the decision on the protest, which may also be rendered by a duly authorized representative of the Commissioner[80] — must be final, i.e., not merely tentative in character.[81]

Apart from decisions on disputed assessments, inactions of the respondent Commissioner in cases involving disputed assessments may likewise be appealed.[82] This is to empower

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Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

77 *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3–7 (1968) [Per J. J.P. Bengzon, En Banc].

78 *St. Stephen's Association v. The Collector of Internal Revenue*, 104 Phil. 314–319 (1958) [Per J. J.B.L. Reyes, En Banc].

79 Revenue Regulations No. 18-2013.

80 TAX CODE, Sec. 228.

81 *St. Stephen's Association v. The Collector of Internal Revenue*, 104 Phil. 314–319 (1958) [Per J. J.B.L. Reyes, En Banc].

82 Republic Act No. 1125, Sec. 7, as amended by Republic Act No. 9282.

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taxpayers who, under the old Tax Code, can be "held hostage by the Commissioner's inaction on [their] protest."[83]

In the case of a decision on the protest, the appeal must be filed 30 days from receipt of the adverse decision.[84] On the other hand, in the case of inaction on the protest, this Court held in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[85] and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[86] that a taxpayer may either:

> (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period[87] fixed by law for the Commissioner of Internal Revenue to act on the disputed assessment;[88] or

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[83] *Commissioner of Internal Revenue v. Avon Products Manufacturing Corporation*, G.R. Nos. 201398-99, October 3, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64720> [Per J. Leonen, Third Division].

[84] TAX CODE, Sec. 228.

[85] 550 Phil. 316 (2007) [Per J. Ynares-Santiago, Third Division].

[86] 683 Phil. 430 (2012) [Per J. Peralta, Third Division].

[87] TAX CODE, Sec. 228 provides:

> Section 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[.] . . .
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> . . . .
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> 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.
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> 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. (Underscoring provided)

[88] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 550 Phil. 316 (2007) [Per J. Ynares-Santiago, Third Division]; *Lascona Land*

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(2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.[89] This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.[90]

These options are mutually exclusive and resort to one bars the application of the other.[91]

Here, there was inaction on the part of the respondent on the petitioner's appeal of the Final Decision on a Disputed Assessment. And under the circumstances, this Court finds that the petitioner genuinely chose to await the Commissioner's final decision on its appeal. To our mind, the option was made in good faith, not as an afterthought or "legal maneuver"[92] to claim that the assessment had not yet become final. This is shown by the petitioner's replies[93] to the Revenue District Officer when the latter issued the Preliminary Collection Letter and Final Notice Before Seizure. In both reply letters, petitioner said that "it will act on the matter as soon as we receive the Commissioner's decision on our appeal."[94] Indeed, petitioner filed the Petition for Review with the Court of Tax Appeals only after the issuance of the June 30, 2014 Letter that decided its May 6, 2011 appeal to the Office of the Commissioner.

Co., Inc. v. Commissioner of Internal Revenue, 683 Phil. 430 (2012) [Per J. Peralta, Third Division].

89 Id.

90 *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, 683 Phil. 430–442 (2012) [Per J. Peralta, Third Division].

91 *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 550 Phil. 316–326 (2007) [Per J. Ynares-Santiago, Third Division]; *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, 683 Phil. 430–442 (2012) [Per J. Peralta, Third Division].

92 Id.

93 *Rollo*, pp. 81–83.

94 Id.

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Furthermore, considering that petitioner awaited the decision of the Commissioner on its appeal, it is immaterial that it filed its Petition for Review beyond the 180-day period for respondent to act on disputed assessments. As held in *Lascona*:

> . . . when a taxpayer protest[s] an assessment, he [or she] naturally expects the [Commissioner] to decide either positively or negatively. A taxpayer cannot be prejudiced if he [or she] chooses to wait for the final decision of the [Commissioner] on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the [Commissioner] will decide on the protested assessment.[95]

Contrary to the ruling of the Court of Tax Appeals *En Banc*, the Final Decision on Disputed Assessment cannot be considered as the decision appealable to the Court of Tax Appeals under Section 7(a)(1) of Republic Act No. 1125, as amended. This interpretation will render nugatory the remedy of appeal to the Office of the Commissioner of Internal Revenue of the denial of protest issued by his or her duly authorized representative, a remedy which was properly and timely availed of by petitioner. Subsection 3.1.5 of Revenue Regulations No. 12-99, in effect when the assessment against petitioner was issued,[96] provided:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —
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> 3.1. Mode of procedures in the issuance of a deficiency tax assessment:
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> . . . .
>
> 3.1.5 *Disputed Assessment*. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. . . .

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[95] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, 683 Phil. 430, 441 (2012) [Per J. Peralta, Third Division].

[96] Revenue Regulations No. 12-99 was amended by Revenue Regulations No. 18-2013, which currently implements Section 228 of the Tax Code on "Protesting of Assessment."

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. . . .

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Underscoring provided)

Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that if the protest is elevated to the respondent Commissioner of Internal Revenue, "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." The Final Decision on Disputed Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.

Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes"

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exist,[97] an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.

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[97] TAX CODE, Secs. 205 and 207 provide:

Section 205. *Remedies for the Collection of Delinquent Taxes*. – The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and

(b) By civil or criminal action.

. . . .

Section 207. *Summary Remedies*. –

(A) Distraint of Personal Property. – Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (₱1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (₱1,000,000) or less, shall seize and distraint any goods, chattels or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.

. . . .

(B) Levy on Real Property. – After the expiration of the time required to pay the delinquent tax or delinquent revenue as prescribed in this Section, real property may be levied upon, before simultaneously or after the distraint of personal property belonging to the delinquent. To this end, any internal revenue officer designated by the Commissioner or his duly authorized representative shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of the tax and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines. (Underscoring provided)

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Commissioner of Internal Revenue v. Isabela Cultural Corporation[98] cannot be made basis to claim that the Final Notice Before Seizure is the final decision on the protest appealable to the Court of Tax Appeals. When *Isabela* was promulgated in 2001, Section 7 of Republic Act No. 1125 had yet to be amended by Republic Act No. 9282[99] to add inactions of the Commissioner as appealable to the Court of Tax Appeals. Moreover, this Court had yet to promulgate *Rizal Commercial Banking Corporation* and *Lascona*, where it was clarified that taxpayers have the option to await the decision of the Commissioner in protests of disputed assessments before they file an appeal with the Court of Tax Appeals. In other words, in *Isabela*, the taxpayer still had no choice of awaiting the decision of the Commissioner on its protest. This is why in *Isabela*, this Court considered the Final Notice Before Seizure as the Commissioner's decision on the protest. More so because it was the only response Isabela Cultural Corporation received from the Commissioner after it had filed its protest.

Unlike here, where the taxpayer filed an appeal with the Commissioner, no similar appeal was made in *Isabela*. Hence, in *Isabela*, there was no final decision on the appeal by the Commissioner to await, and the Final Notice Before Seizure was correctly deemed the final decision on the protest. To insist that petitioner should have considered the Final Notice Before Seizure or the Warrant of Distraint and/or Levy as the decision appealable to the Court of Tax Appeals En Banc is to deprive petitioner of the remedy of awaiting the decision of the Office of the Commissioner of Internal Revenue on its appeal.

The June 30, 2014 Letter denying petitioner's appeal was the final decision on the protest that is appealable to the Court of Tax Appeals. With petitioner having filed its Petition for Review within 30 days from receipt of the June 30, 2014 Letter, the Court of Tax Appeals had jurisdiction over the petitioner's Petition for Review.

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[98] 413 Phil. 376 (2001) [Per J. Panganiban, Third Division].

[99] Republic Act No. 9282 was enacted in 2004.

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II

The question of whether the assessment had prescribed is premised on a question of fact,[100] i.e., the existence of the Waiver of Defense of Prescription signed by petitioner on September 13, 2006. This Court not being a trier of facts,[101] we will not belabor ourselves on this issue. In any case, the Preliminary Assessment Notice issued against petitioner states:

VI. PERIOD OF PRESCRIPTION

Since you/your authorized representative had executed a waiver of the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, on September 13, 2006 and have consented to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than December 31, 2008, the period of prescription, therefore, is suspended from the date of execution up to December 31, 2008.[102]

Petitioner did not controvert this in its protest to the Preliminary Assessment Notice. Hence, this statement is deemed admitted by the petitioner. The petitioner, having allowed the extension of the prescriptive period under Sections 203[103] and 222[104] of

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[100] There is a question of fact "when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties." *See Pascual v. Burgos*, 776 Phil. 167–191 (2016) [Per J. Leonen, Second Division].

[101] *Pascual v. Burgos*, 776 Phil. 167–191 (2016) [Per J. Leonen, Second Division].

[102] *Rollo*, p. 64.

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

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the Tax Code up to December 31, 2008, the assessment made on December 8, 2008, was valid.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision and Resolution of the Court of Tax Appeals En Banc in CTA EB No. 1325 (CTA Case No. 8891)

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this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[104] TAX CODE, Sec. 222 provides:
Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*.
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a preceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
(e) Provided, however, That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

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are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals for a decision on the Light Rail Transit Authority's Petition for Review on the merits.

SO ORDERED.

Lazaro-Javier, M. Lopez, J. Lopez, and *Kho, Jr., JJ.*, concur.

APPEARANCES OF COUNSEL

LRTA Legal Department for petitioner.
Office of the Solicitor General for respondent.