

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

E-POWER SECURITY AND
INVESTIGATION SERVICES,
INC.,

Petitioner,

CTA EB NO. 2747
(CTA Case No. 10143)

Present:

-versus-

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

HON. CAESAR R. DULAY - IN
HIS CAPACITY AS THE
COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

FEB 21 2025

X- - - - -

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* (Re: *Decision* dated 21 November 2022 and *Resolution* dated 16 March 2023),¹ filed on May 2, 2023, by petitioner E-Power Security and Investigation Services, Inc., seeking to reverse and set aside the *Decision* dated November 21, 2022² (assailed *Decision*) and the *Resolution* dated March 16, 2023³ (assailed *Resolution*) of the Court's *First Division* (Court in Division) in CTA Case No. 10143, which dismissed the case for lack of jurisdiction. The dispositive portions of the assailed *Decision* and *Resolution* read as follows:

¹ *En Banc (EB)* Docket, pp. 44-75.
² *Id.* at 10-26.
³ *Id.* at 38-42.

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Assailed Decision:

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

SO ORDERED.

Assailed Resolution:

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Re: Decision dated 21 November 2022)*, is **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner E-Power Security and Investigation Services, Inc. is a private corporation organized and existing under Philippine Law, with principal place of business at the 3rd Floor, AA Building, No. 125 Bonny Serrano Ave., Barangay Socorro (Murphy), Cubao, Quezon City, and is engaged, among others, in the business of providing security guard services to various clients.⁴

Respondent is the Commissioner of Internal Revenue (CIR), the government official principally charged with the implementation, enforcement, and collection of internal revenue taxes in the Philippines.⁵

THE FACTS AND THE PROCEEDINGS

The relevant facts, as found by the Court in Division in the assailed *Decision*, are as follows:

On July 12, 2017, OIC-Regional Director Marina C. De Guzman of BIR Revenue Region No. 7, issued a Letter of Authority authorizing Revenue Officer (RO) Alberto Pengson, Jr. and Group Supervisor (GS) Rodorico Peralta to examine the books of accounts and other accounting records of petitioner for all national internal revenue taxes for the period from January 1, 2015 to December 31, 2015.



⁴ *Id.* at 46–47, *Petition for Review*, pars. 2–3.

⁵ *Id.* at 47, *Petition for Review*, par. 4.

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A Notice for Informal Conference (NIC) was issued on February 21, 2018, which petitioner received on February 27, 2018.

On March 27, 2018, Mildred O. Templo, Chairperson of petitioner's Board of Directors, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (Waiver of Prescription), extending the period to assess until December 31, 2019. The notarized Waiver was accepted by Revenue District Officer Albino M. Galanza on April 21, 2018.

Upon the recommendation of RO Pengson and GS Peralta, a Preliminary Assessment Notice (PAN) with Details of Discrepancies was issued on November 16, 2018, which was received by Herdel Dela Cruz, petitioner's administrative staff, on November 22, 2018.

On December 13, 2018, respondent issued Formal Letter of Demand (FLD) No. 040-2018-B075-15 with Details of Discrepancies and corresponding four (4) Assessment Notices (ANs), demanding the payment of deficiency income tax, VAT, EWT and compromise penalty in the amounts of P10,374,311.05, P4,517,976.89, P26,930.90, and P37,000.00, or a total amount of P14,956,218.84, inclusive of interest, on or before January 14, 2019. The FLD was received by the same Herdel Dela Cruz on December 17, 2018.

On March 5, 2019, a Preliminary Collection Letter was issued and sent through registered mail to petitioner's address.

A Final Notice Before Seizure dated March 18, 2019 was likewise issued and sent through registered mail to petitioner's address.

On April 12, 2019, petitioner submitted a Letter of even date to BIR Revenue Region No. 7, requesting for reconsideration or reinvestigation of the assessment per the FLD.

On May 3, 2019, petitioner sent a Letter dated April 22, 2019 to the Office of the CIR requesting for a review of the computation of the assessed income tax of petitioner, and offering to cooperate on a compromise settlement.

On May 6, 2019, Marivic G. Tulio, Chief of the Collection Division of BIR Revenue Region No. 7, issued a Letter to petitioner suggesting that it pay its deficiency income tax and VAT at the compromise rate of 40% of the basic tax, subject to approval of the National Evaluation Board, and for it to avail of Tax Amnesty under Republic Act (RA) No. 11213.



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BIR Assistant Commissioner Alfredo V. Misajon sent a Letter dated May 8, 2019 referring petitioner's Letter dated April 22, 2019 to BIR Revenue Region No. 7 for verification.

In another Letter dated June 14, 2019, Ms. Tulio denied petitioner's offer of compromise and demanded the payment of the assessed deficiency taxes within five (5) days from receipt of said Letter. Said Letter was received by petitioner on June 28, 2019.

Thereafter, an undated Warrant of Distraint and/or Levy was issued.

On July 29, 2019, petitioner filed the present Petition for Review with Motion to Suspend Collection of Taxes praying for the cancellation and setting aside of the aforementioned assessment, and for the suspension of the collection of the disputed tax liability.

Summonses were served upon the Office of the Solicitor General on August 13, 2022 and upon respondent on August 22, 2019.

On August 29, 2019, petitioner's Motion to Suspend Collection of Taxes was set for hearing. Petitioner's witness, retired Brigadier General Emiliano D. Templo testified on direct examination. The Court ordered the submission of the certified true copies of petitioner's audited financial statements (AFS) for calendar year ending December 31, 2018, within one (1) day, or until August 30, 2019; deferred the completion of the cross-examination of Brigadier General Templo pending submission of the AFS; and, set the continuation of hearing of petitioner's Motion to Suspend Collection of Taxes on September 4, 2019.

Petitioner submitted certified true copies of its 2017 AFS on August 30, 2019.

At the September 4, 2019 hearing, respondent manifested that she will no longer continue with the cross-examination of retired Brigadier General Templo considering that petitioner submitted the 2017 AFS instead of the 2018 AFS. Thus, the Court granted petitioner five (5) days, or until September 9, 2019, to file its Formal Offer of Evidence (FOE). The Court likewise granted a similar period for respondent to file her comment or opposition thereto. From receipt of the resolution on petitioner's FOE, the Court granted the parties five (5) days to file their respective memoranda.

On September 9, 2019, petitioner filed its FOE (Re: Petitioner's Motion for Suspension of Collection of Taxes and/or the Issuance of Temporary Restraining Order/Preliminary Injunction). On the same date, respondent

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belatedly filed a Motion for Extension of Time to File Answer, which the Court granted in the interest of justice in its Resolution dated September 23, 2019, giving respondent until October 6, 2019 to file an Answer.

Respondent filed her Answer on October 7, 2019, the last day (October 6, 2019) being a Sunday.

In the Resolution dated October 24, 2019, the Court admitted petitioner's Exhibits "P-1" — Injunction, "P-2" — Injunction, and "P-3" — Injunction, and reiterated its order for the parties to file their respective memoranda within five (5) days from notice.

Petitioner belatedly filed a Motion for Extension of Time (Re: Memorandum in Connection with the Motion to Suspend Collection of Taxes, TRO/Preliminary Injunction) on November 25, 2019, which the Court nonetheless granted in its Order dated November 28, 2019, giving petitioner until December 2, 2019 to file the same.

Petitioner filed via registered mail its Memorandum on December 2, 2019, advance copies of which were submitted on December 5, 2019.

Respondent failed to file her memorandum per Records Verification dated December 19, 2019. Thus, petitioner's Motion to Suspend Collection of Taxes was submitted for resolution on January 14, 2020.

In the Resolution dated February 3, 2020, the Court denied petitioner's Motion to Suspend Collection of Taxes since petitioner failed to show that the collection of tax would cause irreparable injury to petitioner and/or the Government as required under Section 11 of RA No. 1125, as amended.

The parties agreed not to have their case mediated by the Philippine Mediation Center Unit-CTA per the No Agreement to Mediate dated September 7, 2020, which the Court noted in its Resolution dated September 21, 2020.

On November 18, 2020, respondent filed a Manifestation, with attached copy of its Pre-Trial Brief, informing the Court that she had filed her Pre-Trial Brief via registered mail on November 16, 2020, which the Court received on December 4, 2022. On even date, petitioner filed via email its Pre-Trial Brief, the physical copies of which were submitted by petitioner the next day.

The Pre-Trial Conference was held on November 19, 2020.



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On December 9, 2020, the parties filed their Joint Stipulation of Facts and Issues.

Respondent filed a Compliance on January 19, 2021 elevating the BIR Records of this case.

The Pre-Trial Order was issued on May 19, 2021.

Thereafter, trial ensued. Petitioner presented both documentary and testimonial evidence. It presented the sole testimony of retired Brigadier General Templo, who testified that he was the duly authorized representative of petitioner; it was only in March or April 2019 when he found out about the assessment upon receipt of the Final Notice Before Seizure by their staff; he sent letters to the BIR requesting for a review of the computation of deficiency taxes; the cost of services for the salaries of petitioner's security guards amounts to roughly 90% of the security service fees received by petitioner under its contracts with clients; there exists a breakdown of costs as found in said contracts; petitioner employed around 200 security guards in 2015; and that the salaries of the security guards are sourced from the security service fees billed from petitioner's clients.

On May 24, 2021, petitioner filed a Motion for Extension (Re: FOE), which the Court deemed as granted in its Resolution dated June 22, 2021.

Petitioner filed its FOE on May 28, 2021, while respondent filed her Comment/Opposition thereto on June 14, 2021.

In the Resolution dated October 20, 2021, the Court resolved to admit all of petitioner's exhibits except Exhibits "P-1", "P-1-A", "P-1-B", "P-4", "P-4-A", "P-4-B", "P-13", "P-15", "P-15-A", "P-15-B", "P-16", "P-16-A", "P-18", "P-18-A", "P-19", "P-19-A", "P-19-B", "P-21", "P-24", "P-24-A", "P-24-B" and "P-24-C" for failure of the witness to identify them; Exhibits "P-5" and "P-5-A" for failure to present the originals for comparison and for failure of the witness to identify them; and Exhibit "P-36" for failure to present the original for comparison.

Respondent presented both documentary and testimonial evidence as well. She presented the testimonies of: (1) RO Patricia Camille M. Caleon, who testified that she prepared the Preliminary Collection Letter, Final Notice Before Seizure, and various Letters sent to and received by petitioner's employees; and (2) RO Mary Grace Belen T. Villaluz, who testified that she reviewed the report of RO Pengson in relation to the latter's examination of the books of petitioner; no protest to the FLD was received by her office; and she endorsed the case to the Collection Division for enforcement of summary remedies.



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Respondent filed via registered mail her FOE on May 10, 2022. On May 27, 2022, petitioner filed its Comment thereon.

In the Resolution dated June 23, 2022, the Court admitted all of respondent's exhibits except Exhibits "R-1", "R-2", "R-2-A", "R-2-B", "R-2-C", "R-2-D", "R-3", "R-4" and "R-5" for failure of respondent's witnesses to identify them; and, gave the parties a non-extendible period of thirty (30) days to file their respective memoranda.

Respondent filed her Memorandum on August 1, 2022, while petitioner filed its Memorandum on August 8, 2022. Thereafter, the case was submitted for decision on August 25, 2022.

On November 21, 2022, the Court in Division rendered the assailed *Decision* dismissing the case for lack of jurisdiction.⁶

On January 24, 2023, petitioner filed a *Motion for Reconsideration (Re: Decision dated 21 November 2022)*,⁷ which was denied by the Court in Division in the assailed *Resolution* dated March 16, 2023.

Hence, the instant *Petition for Review* was filed by petitioner on May 2, 2023.

Upon the Court *En Banc*'s directive, respondent filed a *Comment/Opposition (Re: Petitioner's Petition for Review dated May 2, 2023)* on August 17, 2023.⁸ In a Resolution dated September 29, 2023, the Court *En Banc* referred the case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation.⁹

On March 12, 2024, the Court *En Banc* received a *Request for Extension*¹⁰ from (Ret.) Justice Oswaldo D. Agcaoili, Mediator of the PMC-CTA, requesting a final thirty (30)-day extension to provide the parties additional time to reach an amicable settlement.

On April 18, 2024, the parties filed a *Joint Motion for Further Suspension of Proceedings*.¹¹



⁶ EB Docket, pp. 10–26.

⁷ Division Docket, Vol. III, pp. 1602–1611.

⁸ EB Docket, pp. 119–127.

⁹ *Id.* at 128.

¹⁰ *Id.* at 131.

¹¹ *Id.* at 132–147.

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On July 3, 2024, the Court *En Banc* issued a Resolution granting the PMC-CTA's *Request for Extension* but denying the *Joint Motion for Further Suspension of Proceedings* for being filed out of time.¹²

On July 8, 2024, the Court *En Banc* received the PMC-CTA Form 5 (Mediator's Report) stating that mediation between the parties was unsuccessful.¹³ The Court *En Banc* noted the report and submitted the case for decision on August 15, 2024.¹⁴

THE ISSUE

Petitioner presents the lone issue for this Court's resolution:

THIS HONORABLE COURT *EN BANC* SHOULD REVERSE AND SET ASIDE THE ADVERSE DECISION DATED 21 NOVEMBER 2022 OF THE DIVISION A QUO, AS WELL AS THE AFFIRMATORY RESOLUTION DATED 16 MARCH 2023, INASMUCH AS THIS HONORABLE COURT HAS PERTINENT JURISDICTION OVER PETITIONER'S PETITION FOR REVIEW WHICH SHOULD, PERFORCE, BE GRANTED INSOFAR AS THE SAME IS EXPRESSLY AUTHORIZED BY THE FACTS AND THE LAW.

Petitioner's arguments

Petitioner argues that, as highlighted in its motion for reconsideration of the assailed *Resolution*, the Court in Division erred in finding that the Formal Letter of Demand (FLD) was validly served to its authorized representative on December 17, 2018, and that the FLD had become final and executory due to petitioner's failure to file a protest within 30 days. Petitioner claims that this finding lacks evidentiary support. Petitioner adds that the burden of proving proper service of the FLD lies solely with respondent, who failed to present the revenue officer responsible for serving the FLD. Without testimonial evidence from respondent confirming that the FLD was actually and validly served, it is erroneous for the Court in Division to rule that petitioner had until January 16, 2019, to file a protest, which petitioner allegedly failed to do.



¹² *Id.* at 149–153.

¹³ *Id.* at 154.

¹⁴ *Id.* at 160, Resolution.

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Petitioner contends that the FLD only came to management's attention around late March or early April 2019, as affirmed under oath by its president. It insists that this testimony should be given due weight, indicating that petitioner took action by filing a protest.

Regarding the assessment, petitioner asserts that a significant portion of the amounts received from clients constitutes security guards' salaries and should not be classified as income. Lastly, petitioner argues that the assessed basic taxes are erroneous and lack both legal and factual bases.

Respondent's arguments

Respondent reiterates the Court in Division's finding that petitioner received the FLD on December 17, 2018, and failed to file a protest within the required 30-day period. Respondent further argues that petitioner's claims regarding the lack of factual and legal bases for the assessment are unfounded. Respondent points out that petitioner did not properly separate the amounts related to security agency fees from those pertaining to the salaries of security guards, thereby violating the procedures outlined in Revenue Memorandum Circular (RMC) No. 39-2007. Given that the deficiency assessment has become final and executory, respondent avers that this petition should be dismissed for lack of merit.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is bereft of merit.

The Court En Banc has jurisdiction over the instant Petition for Review.

A copy of the assailed *Resolution* denying petitioner's *Motion for Reconsideration* (Re: *Decision dated 21 November 2022*) was received by petitioner on March 31, 2023.¹⁵



¹⁵ Division Docket, Vol. III, p. 1622; par. 4, Motion for Extension of Time to File Petition for Review Under Section 3 [B], Rule 8 of the Revised Rules of the Court of Tax Appeals (Re: *Decision of the Court of Tax Appeals – First Division dated 21 November 2022 and Resolution dated 16 March 2023*), *EB* Docket, p. 4; par. 7, III. Statement of Material Dates, *Petition for Review* (Re: *Decision dated 21 November 2022 and Resolution dated 16 March 2023*), *EB* Docket, p. 46.

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As provided under Section 3(b), Rule 8¹⁶ of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had fifteen (15) days from receipt of the assailed *Resolution* on March 31, 2023, or until April 15, 2023, to appeal to the Court *En Banc*. Given that April 15, 2023, fell on a Saturday, petitioner had until the next working day, or April 17, 2023 (Monday), to file a petition for review.

On April 17, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review under Section 3 [B], Rule 8 of the Revised Rules of the Court of Tax Appeals (Re: Decision of the Court of Tax Appeals – First Division dated 21 November 2022 and Resolution dated 16 March 2023)*,¹⁷ requesting an extension of 15 days from April 17, 2023, or until May 2, 2023, to file a petition for review.

On April 18, 2023, the Court *En Banc* granted petitioner a final and non-extendible period of 15 days counted from the expiration of the period on April 15, 2023, or until April 30, 2023, to file a petition for review.¹⁸

Considering that April 30, 2023, fell on a Sunday and May 1, 2023, was a legal holiday, petitioner had until the next working day, or May 2, 2023, to file a petition for review. Petitioner filed the present petition on May 2, 2023; thus, it was timely filed.

The Court in Division did not err in dismissing the case for lack of jurisdiction.

Section 228 of the NIRC of 1997, as amended, outlines the procedure for protesting an assessment:

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 pre-assessment notice shall not be required in the following cases:

....

¹⁶ SEC. 3. *Who May Appeal; Period to File Petition.* — (b) A party adversely affected by a decision or resolution of a division of the court on a motion for reconsideration or new trial may appeal to the court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

¹⁷ EB Docket, pp. 1–8.

¹⁸ *Id.* at 43.



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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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

Pursuant to Section 228 of the NIRC of 1997, as amended, the proper recourse for petitioner was to dispute the assessment by filing an administrative protest within 30 days from receipt thereof.¹⁹ The crucial issue is whether petitioner filed a protest to the FLD on time.

The Court in Division found that the FLD was received by petitioner's authorized representative on December 17, 2018. However, petitioner's request for reconsideration or reinvestigation of the assessment was submitted only after the 30-day period specified in Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-1999, as amended,²⁰ had expired. To quote the Court in Division:

¹⁹ *Allied Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010 [Per J. Del Castillo, Second Division].

²⁰ SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

....
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:
....

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. (*Emphasis supplied*)

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Since the FLD was **duly served upon petitioner's authorized representative** on December 17, 2018, it had thirty (30) days therefrom, or until **January 16, 2019**, within which to file a protest either via a written request for reconsideration or reinvestigation, which petitioner failed to do. It was only on **April 12, 2019** that petitioner submitted a letter requesting for reconsideration or reinvestigation of the assessment. (*Emphasis on the original; citations omitted*)

The Court *En Banc* concurs with the finding of the Court in Division. A review of the FLD shows that it was received on December 17, 2018, by Mr. Herdel Dela Cruz, who identified himself as "Admin."²¹ Testimony from petitioner's witness, Retired Brigadier General Templo, confirmed that Mr. Dela Cruz, the custodian of petitioner's records, was authorized to receive the FLD. The Court *En Banc* quotes the pertinent portion of the assailed *Decision*:

Retired Brigadier General Templo testified, in his Judicial Affidavit, that Herdel Dela Cruz is petitioner's records custodian, to wit:

"33. Q: Mr. Witness, who's [sic] signature is on, the 2015 Payroll Summary?

A: Sir, this is the signature of **Mr. Herdel Dela Cruz, petitioner's records custodian**. He keeps records like this in his file. I am familiar with his signature because **he regularly signs official corporate documents in the normal course of business** in front of me." (*Boldfacing supplied*)

He likewise admitted on cross-examination that Herdel Dela Cruz is authorized to receive the FLD, *viz.*:

"ATTY. BAGOTSAY:

Q. Last question, *po*, Mr. Witness, on your answer to Question No. 33, found on Page No. 8, may I just confirm, Mr. Witness, that Mr. Herdel Dela Cruz, [is] the petitioner's records custodian? May I just confirm with you, Mr. Witness?

MR. TEMPLO

A. Mr. Herdel Dela Cruz is not our records custodian, but he is a Clerk in the office, your Honors.

XXX

XXX

XXX



²¹ Docket, Vol. III, pp. 1503-1508, Exhibit "R-8".

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MR. TEMPLO:

A. Your Honors, may I clarify this matter? Considering that we only have a few employees in our office, considering that we are just a beginning or a beginner in the security business, **all the employees there are authorized to receive communications coming from the outside.** And, if we talked of the designation of **Mr. Dela Cruz, his designation is as Security Guard, Coordinator, at the same time he's also a Supply Officer. And, he is also authorized to receive communications from the outside."** (*Boldfacing supplied*)

It is clear from petitioner's admission that the FLD was received in the normal course of its business. Thus, the confluence of the testimonial and documentary evidence confirms that the FLD was duly served and received by petitioner on December 17, 2018. Pursuant to the required 30-day period under the afore-cited law and regulations, petitioner had until January 16, 2019, to file a protest to the FLD, but failed to do so.

Petitioner contends that it was only after receiving the Final Notice Before Seizure (FNBS)²² that it became aware of the assessment.²³ Consequently, petitioner filed a letter of protest on April 12, 2019.²⁴

However, in the April 12, 2019 protest letter, petitioner stated that it received the FLD, dated December 13, 2018, on December 27, 2018.²⁵ This statement contradicts the claim that awareness of the assessment only came with the FNBS on April 1, 2019.

Despite these inconsistencies in petitioner's claims, the documentary evidence strongly supports the Court in Division's conclusion that the protest was filed late. As a result, the assessment remains final, executory, and demandable.

Thus, the Court *En Banc* reiterates the Court in Division's pronouncement on the matter:



²² *Id.* at 1518, Exhibit "R-13".

²³ *EB* Docket, p. 49, par. 15.

²⁴ *Id.* at 50, par. 16.

²⁵ Division Docket, Vol. II, pp. 477-479, Exhibit "P-15"; Division Docket, Vol. III, pp. 1519-1521, Exhibit "R-14".

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Considering that petitioner failed to timely protest the FLD, the same has become final, executory and demandable in accordance with Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended. Accordingly, the Court is bereft of jurisdiction to determine the validity or correctness of the assessment.

It is a rule that when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding legal effects. Considering that the subject assessment per FLD No. 040-2018-B075-15 has attained finality for failure of petitioner to protest the same within the prescribed period, the Court has no recourse but to dismiss this case.

Since the Court has no jurisdiction over this case, there is no need to discuss the other issues raised by the parties. *(Citation omitted)*

It is crucial to emphasize that anyone seeking to exercise the right to appeal must adhere to the rules.²⁶ Section 228 of the NIRC of 1997, as amended, and RR 12-99, as amended, clearly state that an administrative protest must be filed within 30 days from receipt of the FLD. Petitioner's letter-protest filed on April 12, 2019, did not comply with this requirement.

Given the absence of a valid administrative protest and no decision on a disputed assessment to assail, the Court in Division is correct in concluding that it lacked jurisdiction over the case.²⁷

Since the Court has no jurisdiction, it cannot resolve the merits of an assessment that has already become final.

WHEREFORE, the *Petition for Review (Re: Decision dated 21 November 2022 and Resolution dated 16 March 2023)* is **DENIED** for lack of merit. Accordingly, the *Decision* dated November 21, 2022, and the *Resolution* dated March 16, 2023, are **AFFIRMED**.



²⁶ *Mejillano v. Lucillo, et al.*, G.R. No. 154717, June 19, 2009 [Per J. Quisumbing, Second Division], citing *Enriquez v. Court of Appeals, et al.*, G.R. No. 140473, January 28, 2003 [Per J. Quisumbing, Second Division].

²⁷ See *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*, G.R. No. 239464, May 10, 2021 [J. Leonen, Third Division].

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SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

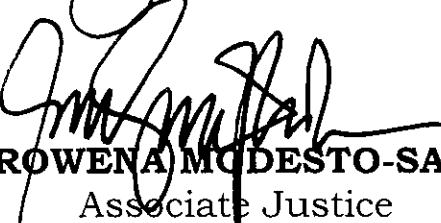
WE CONCUR:

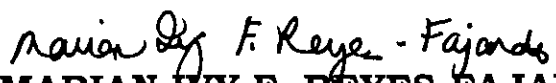

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

DECISION

CTA *EB* No. 2747 (CTA Case No. 10143)

E-Power Security and Investigation Services, Inc. v. Commissioner of Internal Revenue

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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

