Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 239464** Present:
-versus-	LEONEN, *J., Chairperson,* HERNANDO*, INTING, DELOS SANTOS, and LOPEZ, J., *JJ.*
COURT OF TAX APPEALS-THIRD DIVISION and CITYSUPER, INCORPORATED, Respondents.	**Promulgated:** May 10, 2021

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DECISION

LEONEN, *J.*:

When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and the Court of Tax Appeals has no jurisdiction.

This Court resolves a Petition for Certiorari[1] assailing the Resolutions[2] of the Court of Tax Appeals Third Division, which canceled the assessment notices for deficiency income tax, value-added tax, withholding tax on compensation, and expanded withholding tax issued by the Commissioner of

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* On wellness leave.

1 *Rollo*, pp. 3–47. Filed under Rule 65 of the Rules of Court.

2 Id. at 52–70 and 98–104. The December 15, 2017 Resolution and March 20, 2018 Resolution were issued by Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban of the Third Division, Court of Tax Appeals, Quezon City.

Internal Revenue against Citysuper, Inc. (Citysuper). It also found that the Commissioner was estopped from raising its lack of subject-matter jurisdiction over the case.[3]

On April 1, 2013, the Commissioner of Internal Revenue issued Letter of Authority No. 116-2013-00000017 for Bureau of Internal Revenue officials to examine Citysuper's books of account and other accounting records for an investigation for taxable year 2011.[4]

On April 1, 2015, the Commissioner of Internal Revenue issued a Preliminary Assessment Notice for 2011, informing Citysuper of its alleged deficiencies on income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and documentary stamp tax. The total assessed amount was ₱2,083,016,072.43.[5]

On April 24, 2015, Citysuper received the Formal Letter of Demand and Assessment Notices for the unpaid taxes. In response, on April 29, 2015, Citysuper filed a letter with the Bureau of Internal Revenue.[6]

On August 13, 2015, Citysuper filed before the Court of Tax Appeals a Petition for Review under Rule 43 of the Rules of Court, seeking to cancel the Formal Letter of Demand. To its pleading, it attached the Details of Discrepancies and Audit Result/Assessment Notices for 2011. On February 29, 2016, Citysuper submitted its Urgent Motion for Preferential Resolution of the Issue on Prescription. The Commissioner of Internal Revenue filed a Comment/Opposition to the Urgent Motion.[7]

On August 15, 2016, Citysuper presented Beley G. Chua, its corporate secretary. She testified that she had issued an August 12, 2015 Secretary's Certificate attesting that Citysuper's Board of Directors did not authorize one Conchita V. Lee (Lee) "to waive [Citysuper's] defense of prescription for and on its behalf."[8]

On November 15, 2016, the Commissioner of Internal Revenue presented Rosario A. Arriola (Arriola), a revenue officer who testified among others that Citysuper, through Lee, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (Waiver). This Waiver, she said, extended the period to assess Citysuper until December 31, 2015.[9]

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3 Id. at 70.
4 Id. at 52.
5 Id.
6 Id. at 53.
7 Id. at 52–53.
8 Id. at 53.
9 Id. at 54.

During cross-examination, Arriola stated that she required Lee to show proof that she was authorized to sign the Waiver. Lee showed an authorization letter, but Arriola said she was not sure if it was notarized, adding that the letter was in her office and not attached to the case records.[10]

Since Arriola did not have the authorization letter with her, her cross-examination was set to continue on January 24, 2017. However, on that date, Citysuper's counsel failed to appear, prompting the Commissioner of Internal Revenue's lawyer to move for the waiver of the rest of the cross-examination, which the Court of Tax Appeals granted.[11]

When the Commissioner of Internal Revenue filed a Formal Offer of Evidence, the Court of Tax Appeals did not admit the authorization letter. It then ordered the parties to submit their memoranda. The Commissioner moved for partial reconsideration and for the submission of a memorandum to be deferred, but this omnibus motion was not deemed filed. On the other hand, Citysuper filed its Memorandum (On the Issue of Prescription).[12]

In its December 15, 2017 Resolution,[13] the Court of Tax Appeals partially granted the Petition for Review. The dispositive portion reads:

> **WHEREFORE**, in view of all the foregoing, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's Formal Letter of Demand dated April 24, 2015 is **PARTIALLY SET ASIDE** and the corresponding Assessment Notices for deficiency income tax, VAT, WTC, and EWT issued against petitioner are hereby **CANCELLED** and **WITHDRAWN**.
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> Let the hearing on the merits on the DST assessment, as found in the Formal Letter of Demand dated April 24, 2015, be set on **April 16, 2018 at 1:30 p.m.**
>
> **SO ORDERED**.[14] (Emphasis in the original)

Citing provisions of the National Internal Revenue Code, the Court of Tax Appeals found that the prescription period was not validly waived.[15] Under Section 203 of the National Internal Revenue Code, assessments for deficiency taxes should be issued within three years from the last day prescribed by law to file the tax return, or the actual date of filing of such return, whichever comes later:

> SECTION 203. *Period of Limitation Upon Assessment and*

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10 Id. at 55.
11 Id.
12 Id. at 57–58.
13 Id. at 52–70.
14 Id. at 70.
15 Id. at 60–66.

> *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 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.

Section 222(b) provides that the period to assess may be extended upon written agreement of the Commissioner and the taxpayer:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* – . . .
>
> (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.

To implement Section 222(b), the Bureau of Internal Revenue issued Revenue Memorandum Order No. 20-90, which stated in part:

> In the execution of said waiver, the following procedures should be followed:
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> . . . .
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> 2. The waiver shall be signed by the taxpayer [himself/herself] or [his/her/its] duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
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> Soon after the waiver is signed by the taxpayer, the [CIR] or the revenue officer authorized by [him/her], as hereinafter provided, shall sign the waiver indicating that the [BIR] has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.[16]

Revenue Memorandum Order No. 20-90 was modified by Revenue Delegation Authority Order No. 05-01, which mandated that the authorized revenue official ensure that the waiver was duly accomplished by the taxpayer or their authorized representative, and that, if the authority to execute the waiver was delegated, the revenue official should make sure that

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[16] Id. at 60.

the delegation was in writing and duly notarized.[17]

The Court of Tax Appeals found that the prescriptive periods for some of the deficiency value-added taxes, withholding taxes on compensation, and expanded withholding taxes had elapsed. Lee signed the Waiver on July 10, 2014, and Officer-in-Charge-Assistant Commissioner-LTS Nestor S. Valeroso accepted it on July 25, 2014. Thus, the Court of Tax Appeals said, the following taxes could no longer be assessed:[18]

TAX RETURNS	LAST DAY TO ASSESS
[Value Added Tax]	
1st Quarter	April 25, 2014
[Withholding Tax on Compensation]	
January	February 13, 2014
February	March 13, 2014
March	April 13, 2014
April	May 13, 2014
May	June 13, 2014
June	July 13, 2014
[Expanded Withholding Tax]	
January	February 13, 2014
February	March 13, 2014
March	April 13, 2014
April	May 13, 2014
May	June 13, 2014
June	July 13, 2014[19]

The following taxes remained:

TAX RETURNS	LAST DAY TO ASSESS
Income Tax	April 15, 2015
[Value Added Tax]	
2nd	July 25, 2014
3rd	October 25, 2014
4th	January 25, 2015
[Withholding Tax on Compensation]	
July	August 13, 2014
August	September 13, 2014
September	October 13, 2014
October	November 13, 2014
November	December 13, 2014
December	January 30, 2015
[Expanded Withholding Tax]	
July	August 13, 2014
August	September 13, 2014
September	October 13, 2014
October	November 13, 2014
November	December 13, 2014
December	January 15, 2015[20]

17 Id. at 60–61.
18 Id. at 65.
19 Id.

However, the Court of Tax Appeals found that Lee was unauthorized to enter into the Waiver on Citysuper's behalf. It said that Lee's authority was never presented and properly identified. As such, the Court of Tax Appeals denied the letter when it was formally offered, pursuant to Rule 132, Section 20 of the Rules of Court, under which only documents duly identified by a competent witness and formally offered in evidence would be admitted.[21]

Further, the Court of Tax Appeals found that the parties were not *in pari delicto* due to the Waiver. It found no showing that Citysuper itself knew of the Waiver or authorized someone to sign it. It also did not find that Citysuper dealt with revenue officers based on the Waiver. Citysuper was not deemed to have benefited from the Waiver as it had already forwarded some of the required documents to the Commissioner of Internal Revenue before the Waiver was signed.[22]

Finally, as to the documentary stamp tax, the Court of Tax Appeals ordered that a full-blown trial be conducted to determine if Citysuper should be made liable, as insufficient evidence was presented to determine if the Commissioner's right to assess had prescribed.[23]

In a Motion for Reconsideration, the Commissioner of Internal Revenue argued that the Court of Tax Appeals had no jurisdiction. It explained that Citysuper had admitted receiving the Final Letter of Demand and Assessment Notices on April 24, 2015, which meant that Citysuper had until May 24, 2015 to file its protest.[24] While it allegedly filed a protest on April 29, 2015, the Commissioner claimed that the protest letter only had the assessment notices attached, and stated that Citysuper was still compiling supporting documents.[25] With no protest, the Commissioner said, the assessment became final—depriving the Court of Tax Appeals of jurisdiction, which only pertained to disputed assessments.[26]

Second, the Commissioner claimed that the Court of Tax Appeals incorrectly computed the prescriptive periods for the deficiency taxes, as the period that should have applied was 10 years under Section 222(a) of the

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20 Id. at 65–66.
21 Id. at 66.
22 Id. at 68.
23 Id. at 69–70.
24 The Commissioner of Internal Revenue cites TAX CODE, sec. 228 which states, in part:
SECTION 228. *Protesting of Assessment.* - . . . .
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.
25 *Rollo,* pp. 74–75.
26 Id. at 77.

National Internal Revenue Code, due to the substantial under-declaration of income and sales, which constituted a false return.[27]

Finally, the Commissioner argued that the Waiver was valid. It argued that since Lee's authorization letter was notarized, it should be considered a public document without further proof of authentication.[28]

In its March 20, 2018 Resolution,[29] the Court of Tax Appeals denied the Motion for Reconsideration. It found that the defense of lack of jurisdiction was barred by laches, following *Tijam v. Sibonghanoy*.[30] Holding that the *Tijam* doctrine was the rule, not the exception, the Court of Tax Appeals found that the issue of prescription had never been raised until the December 15, 2017 Resolution was issued.[31]

On June 13, 2018, the Commissioner of Internal Revenue filed before this Court its Petition for Certiorari[32] against Citysuper.

Petitioner argues that the Court of Tax Appeals gravely abused its discretion in finding that they were barred by laches from raising the issue of jurisdiction. To petitioner, the Court of Tax Appeals deliberately made it appear that the *Tijam* doctrine was the rule, not the exception, on the issue of jurisdiction. Citing *Figueroa v. Republic*,[33] petitioner argues that the prevailing doctrine is still that the issue of jurisdiction may be raised at any time, and that *Tijam* should only apply when there are similarities in the circumstances between *Tijam* and the present case.[34]

Insisting that they are not estopped from questioning the Court of Tax Appeals' jurisdiction,[35] petitioner says that in their Answer to the Petition for Review, they had raised lack of jurisdiction as an affirmative defense:

> WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION. THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.[36]

In the same Answer, says petitioner, they prayed that respondent's Petition for Review be dismissed for lack of jurisdiction.[37]

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27 Id. at 81–83.
28 Id. at 87–94.
29 Id. at 98–104.
30 131 Phil. 556 (1968) [Per J. Dizon, En Banc].
31 *Rollo*, pp. 101–104.
32 Id. at 3–47. With prayer for a temporary restraining order and/or writ of preliminary injunction.
33 580 phil. 58 (2008) [Per J. Nachura, Third Division].
34 Id. at 16–19.
35 Id. at 19.
36 Id. at 20.
37 Id.

Petitioner adds that in their Pre-Trial Brief and in the Joint Stipulation of Facts and Issues, they raised the issue of jurisdiction. They note that during trial, they presented evidence that respondent did not file a valid protest, which made the assessments final and demandable.[38]

Because of these, petitioner argues that the circumstances of this case differ from those in *Tijam*.[39]

Petitioner then claims that the Court of Tax Appeals should have admitted the authorization letter, as it was a notarized document. They claim that respondent was aware of the Waiver's execution, since both the Preliminary Assessment Notice and the Formal Letter of Demand stated that its authorized representative had executed a waiver of prescription pursuant to Section 203 and 222 of the National Internal Revenue Code. Thus, petitioner argues that respondent should be estopped from assailing the existence and due execution of the Waiver.[40]

Finally, petitioner prays that a temporary restraining order and/or writ of preliminary injunction be issued to suspend the proceedings in the Court of Tax Appeals. It argues that since the Court of Tax Appeals' jurisdiction is being assailed, any further proceedings would render the Petition for Certiorari moot.[41]

This Court ordered respondent Citysuper to comment on the Petition for Certiorari, which it did on September 21, 2018.[42]

In its Comment,[43] respondent argues that petitioner availed the incorrect remedy when it filed a Rule 65 petition. It claims that the Court of Tax Appeals' rulings were final, and not interlocutory, orders. To respondent, petitioner should have filed a Rule 43 petition before the Court of Tax Appeals *En Banc*. Having failed to do that within the prescribed period, petitioner allegedly opted to file a petition for certiorari, which respondent insists cannot substitute for an appeal.[44]

Next, respondent claims that the Court of Tax Appeals validly acquired jurisdiction over the subject matter of the case. While it concedes that it filed its protest against the deficiency assessments, it says petitioner's active participation during the proceedings in the Court of Tax Appeals

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38 Id. at 21.
39 Id. at 23.
40 Id. at 24–31.
41 Id. at 44-A.
42 Id. at 242–243.
43 Id. at 244–303.
44 Id. at 255–263.

showed that petitioner expressly and impliedly submitted to the tax court's jurisdiction.[45]

Finally, respondent claims that petitioner's right to assess deficiency income tax, value-added tax, withholding tax on compensation, and expanded withholding tax has already prescribed.[46]

The issues to be resolved in this case are:

First, whether or not petitioner Commissioner of Internal Revenue availed the correct remedy to the December 15, 2017 and March 20, 2018 Resolutions of the Court of Tax Appeals;

Second, whether or not the Court of Tax Appeals gravely abused its discretion in finding that petitioner Commissioner of Internal Revenue is barred from raising the issue of jurisdiction due to estoppel by laches; and

Finally, whether or not the Court of Tax Appeals gravely abused its discretion in refusing to admit in evidence the authorization letter issued in favor of Conchita V. Lee.

The Petition is granted.

I

Petitioner availed the correct remedy, which was likewise filed on time.

Contrary to respondent's claim, the Court of Tax Appeals' December 15, 2017 and March 20, 2018 Resolutions were interlocutory orders, only partially disposing of the issues raised in CTA Case No. 9117. When the Resolutions were issued, hearings on the merits of the documentary stamp tax assessment were underway. The Court of Tax Appeals resolved the issue of prescription ahead of the others since respondent specifically moved for it in an Urgent Motion.[47] Respondent's subsequent payment of the documentary stamp tax assessment did not affect the Resolutions' nature itself.

Being interlocutory orders, the Resolutions were the proper subject of a Rule 65 petition.

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45 Id. at 263–273.
46 Id. at 273–283.
47 Id. at 103.

II

The Court of Tax Appeals ruled that petitioner was barred from raising jurisdictional issues because of *Tijam v. Sibonghanoy*:[48]

> In fact, the Supreme Court has consistently resolved issues that involve the belated invocation of lack of jurisdiction applying the principle of estoppel by laches. While in *Calimlim v. Ramirez* ("*Calimlim*"), the Supreme Court accorded supremacy to the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel, in the subsequent cases decided after *Calimlim*, the Sibonghanoy doctrine became the rule rather than the exception.[49] (Emphasis in the original, citation omitted)

The Court of Tax Appeals is incorrect. *Tijam* is the exception, not the rule, concerning the affirmative defense of lack of subject-matter jurisdiction.

In *Villagracia v. Fifth Shari'a District Court*:[50]

> In *Tijam*, it took Manila Surety and Fidelity Co., Inc. 15 years before assailing the jurisdiction of the Court of First Instance. As early as 1948, the surety company became a party to the case when it issued the counter-bond to the writ of attachment. During trial, it invoked the jurisdiction of the Court of First Instance by seeking several affirmative reliefs, including a motion to quash the writ of execution. The surety company only assailed the jurisdiction of the Court of First Instance in 1963 when the Court of Appeals affirmed the lower court's decision. This court said:
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> > . . . Were we to sanction such conduct on [Manila Surety and Fidelity, Co. Inc.'s] part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel [the spouses Tijam] to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.
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> After this court had rendered the decision in *Tijam*, this court observed that the "non-waivability of objection to jurisdiction" has been ignored, and the Tijam doctrine has become more the general rule than the exception. In *Calimlim v. Ramirez*, this court said:
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> > A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject-matter of the action is a matter of law and may not be conferred by

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48 131 Phil. 556 (1968) [Per J. Dizon, En Banc].
49 *Rollo*, p. 102.
50 734 Phil. 239 (2014) [Per J. Leonen, Third Division].

> consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of [Tijam v. Sibonghanoy]. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. . . .
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> Thus, the court reiterated the "unquestionably accepted" rule that objections to a court's jurisdiction over the subject matter may be raised at any stage of the proceedings, even on appeal. This is because jurisdiction over the subject matter is a "matter of law" and "may not be conferred by consent or agreement of the parties."
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> In *Figueroa*, this court ruled that the *Tijam* doctrine "must be applied with great care;" otherwise, the doctrine "may be a most effective weapon for the accomplishment of injustice":
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> > . . . estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely — only from necessity, and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be a most effective weapon for the accomplishment of injustice. . . . a judgment rendered without jurisdiction over the subject matter is void. . . . No laches will even attach when the judgment is null and void for want of jurisdiction[.][51] (Emphasis in the original, citations omitted)

Tijam should be considered as a waiver of a party's right to raise jurisdiction on equitable grounds.[52]

The general rule still remains: The issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.[53] Only when exceptional circumstances exist similar to what took place in *Tijam*—such as an extraordinarily long period of time before the issue was raised, and the court's jurisdiction being assailed only after an unfavorable judgment, despite earlier obtaining an affirmative relief—should a party be barred from raising lack of jurisdiction as a defense.

Key to a proper application of *Tijam* are the presence of the following circumstances: first, a statutory right in the claimant's favor; second, a failure to invoke the statutory right; third, an unreasonable length of time elapsing before the claimant raised the jurisdictional issue; and fourth, the

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51 Id. at 259–261.

52 *Amoguis v. Ballado*, G.R. No. 189626, August 20, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64639> [Per J. Leonen, Third Division].

53 *Cacho v. Balagtas*, 825 Phil. 597 (2018) [Per J. Leonardo-De Castro, First Division]; *Cabrera v. Clarin*, 801 Phil. 141 (2016) [Per J. Peralta, Third Division]; and *Adlawan v. Joaquino*, 787 Phil. 599 (2016) [Per J. Brion, Second Division].

claimant's active participation in the case and prayer for affirmative relief from the court without jurisdiction.[54] The confluence of these circumstances shows that the claimant knew or should have known of the right in their favor, and yet took an unreasonable amount of time to invoke their right.[55]

The circumstances in *Tijam* do not exist here.

According to the Court of Tax Appeals, petitioner was barred by laches from raising the issue of subject-matter jurisdiction in its Motion for Reconsideration:

> In the case at bar, the Court finds that respondent is barred by laches on account of its failure to raise the issue of jurisdiction over the subject matter, which is intertwined with issue of prescription for prescription will not apply if the Court has no jurisdiction since the assessment has attained finality even before the filing of the Petition for Review with the Court. A review of the factual antecedents would reveal that the issue was never raised by respondent, even to the very end when the issue was submitted for resolution. It was only upon the promulgation of the assailed Resolution, adverse to respondent, when it suddenly claimed lack of jurisdiction on the part of the Court.
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> When [petitioner] filed its Urgent Motion for Preferential Resolution of the Issue on Prescription on February 29, 2016, respondent submitted his Comment/Opposition [Re: Petitioner's Urgent Motion for Preferential Resolution of the Issue on Prescription dated 19 February 2016[]] on April 6, 2016. Respondent did not raise jurisdiction as an issue.
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> The Court granted petitioner's Urgent Motion for Preferential Resolution of the Issue on Prescription, and gave the parties an opportunity to present evidence in this regard.
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> Petitioner presented its witness M. Belley G. Chua on August 15, 2016, and filed its Formal Offer of Documentary Evidence (On the Issue of Prescription) and Addendum on August 30, 2016 and September 1, 2016, respectively. Respondent then submitted with the Court its Comment [Re: Petitioner's Formal Offer of Documentary Evidence dated 30 August 2016] on September 8, 2016.
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> On November 15, 2016 and January 24, 2017, respondent presented witness Revenue Officer Rosario A. Arriola, and submitted his Formal Offer of Evidence on March 16, 2017.
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> Petitioner, then, filed its Memorandum (On the Issue of Prescription) on July 25, 2017; with no memorandum filed by respondent. Thereafter, the issue of prescription was submitted for resolution.
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> On top of the foregoing, respondent filed the following pleadings (among others) with the Court, never questioning nor raising as an issue its jurisdiction, to wit: (1) Comment/Opposition (Re: Petitioner's Urgent

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[54] *Amoguis v. Ballado*, G.R. No. 189626, August 20, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64639> [Per J. Leonen, Third Division].

[55] Id.

> Motion for Suspension of Collection of Taxes); (2) Answer (to the Petition for Review dtd. Aug 11, 2015), (3) Memorandum (In Opposition of Petitioner's Urgent Motion for Suspension of Collection of Taxes); (4) Judicial Affidavit of Revenue Officer Rosario A. Arriola; (5) Respondent's Pre-Trial Brief; and (6) Comment (Re: Petitioner's Motion to Correct Pre-Trial Order).[56]

Petitioner raised the issue of lack of jurisdiction as early as in their Answer to the Petition for Review. In the Answer, petitioner had already argued that respondent did not file a valid protest, which meant the assessments for deficiency tax had become final, executory, and demandable. There being no disputed assessment, the Court of Tax Appeals had no jurisdiction over the Petition for Review.

Contrary to the Court of Tax Appeals' finding that jurisdiction was not raised in the Answer, this was petitioner's first special and affirmative defense:

> WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION. THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.
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> 5. A taxpayer's right to contest assessments, particularly, the right to appeal to the Court of Tax Appeals, may be waived or lost as in this case. The Bureau of Internal Revenue ("BIR") issued the Formal Letter of Demand ("FLD") and Assessment Notices (BIR Form 0401) for taxable year 2011. Both were dated 24 April 2015 and were received by petitioner on even date.
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> 6. As contained in paragraph 5 of the instant petition, petitioner admits that it received the FLD and the Assessment Notices for taxable year 2011 on . . . 24 April 2015.
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> . . . .
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> 8. Based on the above quoted Section 228 of the NIRC, the taxpayer has thirty (30) days from receipt of the FLD and Assessment Notice within which to file its protest.
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> . . . .
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> 10. Here, from the receipt of the FLD and Assessment Notices on 24 April 2015, petitioner had until 24 May 2015 within which to file a valid protest on the assessment with the respondent.
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> 11. Petitioner interposed that it filed a valid protest on 29 April 2015 (Attached as Annex "VV[“] to the petition). Respondent submits that

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[56] *Rollo*, pp. 102–103.

there was no valid protest as contemplated by the Tax Code and the Rules. The alleged protest letter simply informed respondent that the petitioner is in the process of compiling the necessary documentation to support the protest to said assessments.

12. Respondent interpose[d] that the alleged protest letter failed to comply with the requirements of Section 6 in relation to Section 228 of the Tax Code as implemented by Revenue Regulations No. 18-2013 which requires that taxpayer shall state in his protest (i) nature of protest whether reconsideration or reinvestigation specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice and (iii) the applicable law, rules and regulations or jurisprudence on which the protest is based, otherwise, his protest shall be considered void and without force and effect.[57]

Because of this, petitioner prayed for the Petition for Review's dismissal due to lack of jurisdiction:

WHEREFORE, premises considered, it is most respectfully prayed of the Honorable Court that the instant Petition for Review be **DISMISSED** for lack of jurisdiction and/or **DENIED** for utter lack of merit and **ORDER** petitioner CITYSUPER, INC to pay the total amount of **P2,083,016,072.43** for deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation (WC), Expanded Withholding Tax (WE) and Documentary Stamp Tax (DST) including compromise penalty for taxable year 2011, as well as 25% and 50% Surcharge, 20% Deficiency and Delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997.[58] (Emphasis in the original)

Petitioner similarly raised the Court of Tax Appeals' lack of jurisdiction in its Pre-Trial Brief:

IV. Issues to Be Tried Or Resolved

a. Whether the Honorable Court has jurisdiction over the instant petition.[59]

Again, petitioner included the issue of jurisdiction among one of its issues in the December 3, 2015 Joint Stipulation of Facts and Issues:

IV. Issues To Be Tried or Resolved

a. Whether the Honorable Court has jurisdiction over the instant petition.[60]

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57 Id. at 106–108.
58 Id. at 130.
59 Id. at 203.
60 Id. at 212.

Thus, the Court of Tax Appeals had no basis in finding that only when petitioner assailed the December 15, 2017 Resolution did they raise the jurisdictional issue. When the defendant or respondent questions the court's jurisdiction from the start, *Tijam* does not apply.[61]

Respondent's argument that petitioner had voluntarily submitted to the court's jurisdiction by seeking affirmative reliefs[62] is misplaced. Voluntary submission pertains to jurisdiction over the person:

> Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. Jurisdiction over the subject matter is conferred by the Constitution or by law while jurisdiction over the person is acquired by his voluntary submission to the authority of the court or through the exercise of its coercive processes. Jurisdiction over the *res* is obtained by actual or constructive seizure placing the property under the orders of the court.[63] (Citations omitted)

The cases respondent cited—*Palma v. Hon. Galvez*[64] and *Philippine Commercial International Bank v. Dy Hong Pi*[65]—concern the acquisition of jurisdiction over the person of the defendant in a civil case, should coercive legal processes such as summonses fail, if the defendant seeks some kind of affirmative relief.

On the other hand, what is involved here is the Court of Tax Appeals' jurisdiction over the subject matter of the case, namely, respondent's right to question petitioner's assessment. No matter how many voluntary submissions a defendant or respondent makes to a court, the court does not acquire jurisdiction over the subject matter when it is not conferred by the Constitution or law. Estoppel does not confer jurisdiction over the subject matter.[66]

Petitioner's participation in the proceedings before the Court of Tax Appeals did not prejudice their claim of lack of jurisdiction, given that they had raised this issue at the earliest opportunity: in their Answer to the Petition for Review. Petitioner never induced the Court of Tax Appeals to adopt a theory that it had jurisdiction over respondent's protest, and upon appeal, assume an inconsistent position.[67] In contrast, this Court has applied *Tijam* to cases where the defending party only belatedly made jurisdiction an issue upon their loss,[68] in which event, they were already barred by laches.[69]

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61 *Zamora v. Court of Appeals*, 262 Phil. 298 (1990) [Per J. Cruz, First Division].
62 *Rollo*, pp. 265–266.
63 *Zamora v. Court of Appeals*, 262 Phil. 298, 304 (1990) [Per J. Cruz, First Division].
64 629 Phil. 86 (2010) [Per J. Peralta, Third Division].
65 606 Phil. 615 (2009) [Per C.J. Puno, First Division].
66 *Velasquez, Jr. v. Lisondra Land, Inc.*, G.R. No. 231290, August 27, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66412> [Per J. Lopez, First Division].
67 *People v. Casiano*, 111 Phil. 73 (1961) [Per J. Concepcion, En Banc].
68 *Spouses Gonzaga v. Court of Appeals*, 442 Phil. 735 (2002) [Per J. Corona, Third Division] citing *Orosa v. Court of Appeals*, 386 Phil 94 (2000) [Per J. Ynares-Santiago, First Division].

Petitioner argues that the Court of Tax Appeals had no jurisdiction over respondent's Petition for Review because the assessment had attained finality before then.

Section 228 of the National Internal Revenue Code states the procedure in protesting an assessment:

> 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: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on exciseable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> 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

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69 *Figueroa v. People*, 580 Phil. 58 (2008) [Per J. Nachura, Third Division].

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)

Upon receipt of the audit results/assessment notices for Letter of Authority No. 116-2013-00000017, respondent, through Lee, replied with an April 29, 2015 letter which reads:

This is to submit copies of our protest to the Audit Result/Assessment Notices for Audit Result/Assessment Notices for Letter of Authority LOA-116-2013-00000017 for Citysuper Incorporated TIN No.: 205-412-358 for the taxable year 2011.

Please be informed that we are in the process of compiling the necessary documentation to support our protest to said assessments, and will be requiring additional time to accomplish this.[70]

Petitioner did not consider the April 29, 2015 letter as a valid protest, as it said in its July 13, 2015 response to respondent:

The requisite information and conditions prescribed under the provisions of Section 6 in relation to Section 228 of the Tax Code, as amended, as implemented by Revenue Regulations No. 18-2013, for filing a valid protest were not met, as enumerated hereunder, to wit:

Your letter dated, April 29, 2015, failed to indicate/state the following:

a. Name and address of the taxpayer;

b. The nature of the protest, since the letter merely contained a statement that the subject taxpayer was in the process of compiling documents for eventual presentation to the bureau;

c. The assessment number, date of receipt of assessment notice and formal letter of demand;

d. The itemized statement of findings to which the taxpayer agrees and schedule of adjustments to which the taxpayer does not agree;

e. A statement of the facts, applicable law, rules and regulations or jurisprudence in support of the protest.

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70 *Rollo*, p. 353.

> Premised on the foregoing, a collection letter shall be issued against Citysuper, Inc., calling for payment of the aforesaid deficiency assessments on Income Tax, VAT, Withholding tax on Compensation, EWT and DST for taxable year 2011.[71]

In particular, Arriola, the revenue officer, said that the April 29, 2015 letter failed to state the protest's nature, the date of the assessment notice, and the applicable law, rules and regulations, or jurisprudence on which the protest was based. Thus, to petitioner, respondent's failure to properly protest the assessment meant that it had attained finality.[72]

Section 3.1.14 of Revenue Regulations No. 18-2013, amending Revenue Regulations No. 12-99, states what constitutes a valid protest:

> 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> > (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> *The taxpayer shall state in his protest (i) the nature of the protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.*
>
> . . . .
>
> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of

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71 Id. at 239–240.

72 Id.

> newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> If the taxpayer failed 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)

Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.

While respondent's declaration that it was "in the process of compiling the necessary documentation to support [its] protest to said assessments"[73] could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.

Section 228 of the National Internal Revenue Code is clear. The administrative protest must be filed not only within the stated period, but also "in such form and manner as may be prescribed by implementing rules and regulations." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.

The Court of Tax Appeals is a court of special jurisdiction.[74] Section 7 of Republic Act No. 9282 states what matters involving the Commissioner of Internal Revenue are within its exclusive appellate jurisdiction:

> SECTION 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;

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73 Id. at 353.

74 *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, 550 Phil. 316 (2007) [Per J. Ynares-Santiago, Third Division].

> (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[.]

In respondent's Petition for Review, it contended that its Petition was timely filed because it was assailing the July 13, 2015 letter, which it claimed was petitioner's "final decision on the matter of petitioner's protest against the deficiency tax assessments for the taxable year 2011."[75]

This argument is inaccurate.

In *Commissioner of Internal Revenue v. Villa*,[76] this Court held that the Court of Tax Appeals' jurisdiction was over the Commissioner of Internal Revenue's decision on the protest against an assessment, and not the assessment itself. Thus, the period to invoke judicial review must be counted from receipt of the Commissioner's decision on the disputed assessment.[77]

Here, however, respondent's protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code. Respondent erred in claiming that the July 13, 2015 letter was petitioner's "final decision" on its protest, there being no valid protest to speak of. Notably, the July 13, 2015 letter did not discuss the merits of any communication sent by respondent after its April 29, 2015 letter, but merely stated that no valid protest was filed.[78]

The circumstances here are analogous to those in *Ker & Company, Ltd. v. Court of Tax Appeals*,[79] where this Court found that the material date was the issuance from the Commissioner which contained the original demand, and not its reiteration:

> It is argued that the decision or ruling of the Collector which should be appealed to the Tax Court is the former's letter dated January 5, 1954 (Exh. 13), and that the 30-period provided in section 11, commenced to run only on February 1, 1956, the date on which the petitioner-appellant received the Collector's letter dated January 23, 1956. This contention is

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75 *Rollo*, p. 311.

76 130 Phil. 3 (1968) [Per J. Bengzon, En Banc].

77 Id. *See also Dy Pac & Company, Inc. v. Court of Tax Appeals*, 169 Phil 429 (1977) [Per C.J. Castro, First Division]; and *Allied Banking Corporation v. Commissioner of Internal Revenue*, 625 Phil. 530 (2010) [Per J. Del Castillo, Second Division].

78 *Rollo*, p. 239–240.

79 G.R. No. L-12396, January 31, 1962 [Per J. Paredes, En Banc].

without merit. The Collector's letter dated January 23, 1956, partly reads as follows:

> "With reference to your letter dated August 1, 1955, concerning the deficiency income tax liabilities of Ker & Co., Ltd., Manila, for 1947, 1948, 1949 and 1950, I regret to have to inform you that, notwithstanding your allegations therein, this Office still finds no justification to alter, reverse or modify the assessments issued against your client for said years.
>
> As elucidated in our letter to you of January 5, 1954, the alleged home-leave liabilities which your client claimed as deduction were disallowed as such because the same were not actually incurred but were mere reserve accounts for contingent purpose. No evidence were presented by you showing that the said expenses were actually incurred in the years of their deductions or in the subsequent years. . . .".

It is thus noted that the allegation in the above quoted letter is simply a reiteration of the previous demand as contained in the Collector's letter of January 5, 1954 (Exh. 13). Again the Collector sent to the petitioner-appellant the demand letter dated July 28, 1954 (Exh. 18), which merely reiterated the demand dated January 5, 1954. Although petitioner denied having received said letter, yet it is significant to mention that when it was presented to the lower court as Exhibit 18 for the Collector, the petitioner had not objected to it. This is the first time they attack its receipt. It is finally to be observed that the ruling of the Collector contained in his letter of January 5, 1954, remained unaltered and unmodified. As the Court *a quo* has correctly commented —

> "Under the facts stated above, we find that the decision of respondent which is appealable to this Court under Sections 7 and 11 of Republic Act No. 1125 is the one contained in his letter of January 5, 1954, the same having remained unaltered and unmodified up to the date the appeal was filed (See Angel Saraos v. CIR, CTA Case No. 229, March 5, 1956; Merced Drug Store v. CIR, CTA Case No. 180, May 21, 1956. . . .
>
> Moreover, since a letter of demand or assessment was sent by the Collector of Internal Revenue to a taxpayer contains a determination of the tax liability of the latter, such letter or assessment must be considered as the 'decision' appealable to this Court. The Supreme Court appears to recognize the same view when it held that the assessment made by the Collector of Internal Revenue is the substantive and dispositive part of his decision' (Ventanilla v. BTA, G.R. No. L-7384, prom. Dec. 19, 1955). Under circumstances comparable with our law, the United States Supreme Court in the case of Gull v. U.S. (1935, 295 U.S. 247; 79 L. ed., 1941) sustained the same theory that the assessment is the action of an administrative agency equivalent to a decision and is therefore given the force of a judgment".

> This being the case, it logically follows that the decision which was appealed was that of January 5, 1954 and that the 30-day period should have started from the receipt of the said letter on January 25, 1954 (Exh. 14). No appeal having been taken from this decision, the same became final, conclusive and executory (Roxas v. Sayoc, G. R. No. L-8502, Nov. 29, 1956).[80]

When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the appeal is premature and the Court of Tax Appeals has no jurisdiction:

> Since in the instant case the taxpayer appealed the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction.[81] (Citation omitted)

Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue. Respondent's April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. There was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the Court of Tax Appeals had no jurisdiction over the Petition for Review assailing the July 13, 2015 letter.

Since the Court of Tax Appeals has no jurisdiction, there is no longer any need to resolve whether it gravely abused its discretion in refusing to admit in evidence the authorization letter issued to Lee.

WHEREFORE, the Petition for Certiorari is **GRANTED**. The December 15, 2017 and March 20, 2018 Resolutions of the Court of Tax Appeals in CTA Case No. 9117 are **REVERSED and SET ASIDE**. The Petition for Review filed before the Court of Tax Appeals is **DISMISSED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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80 Id.

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

WE CONCUR:

On wellness leave
RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice