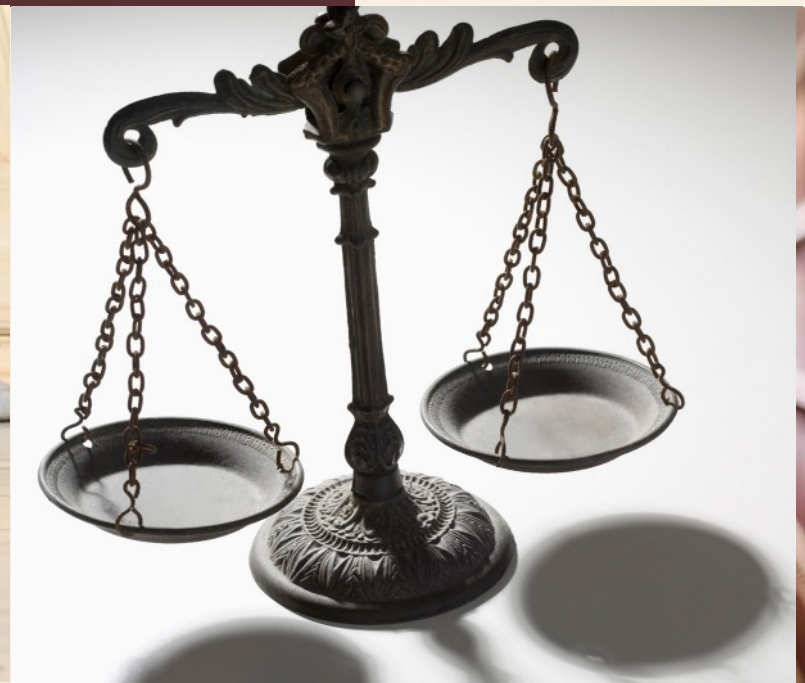
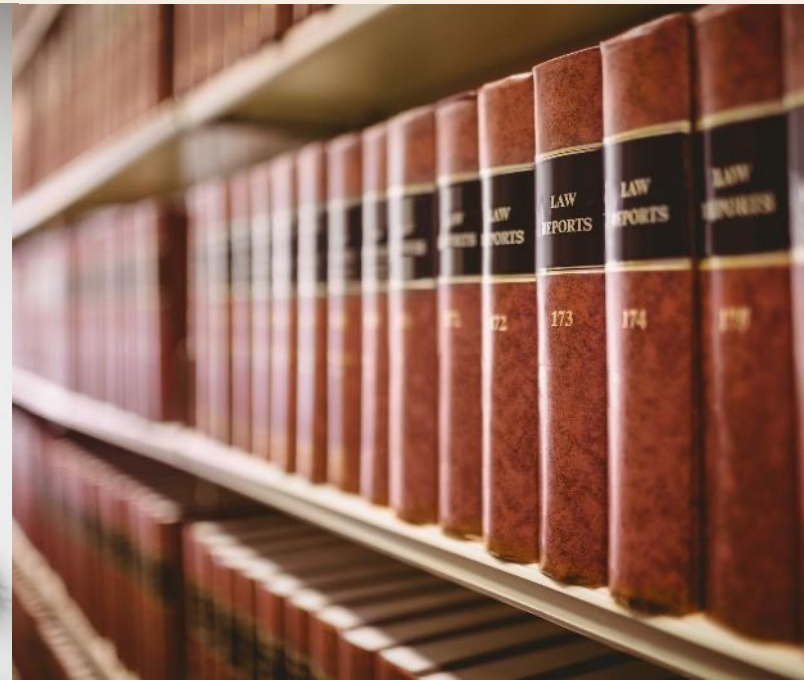
The *LRTA* case

14 February 2023

The case

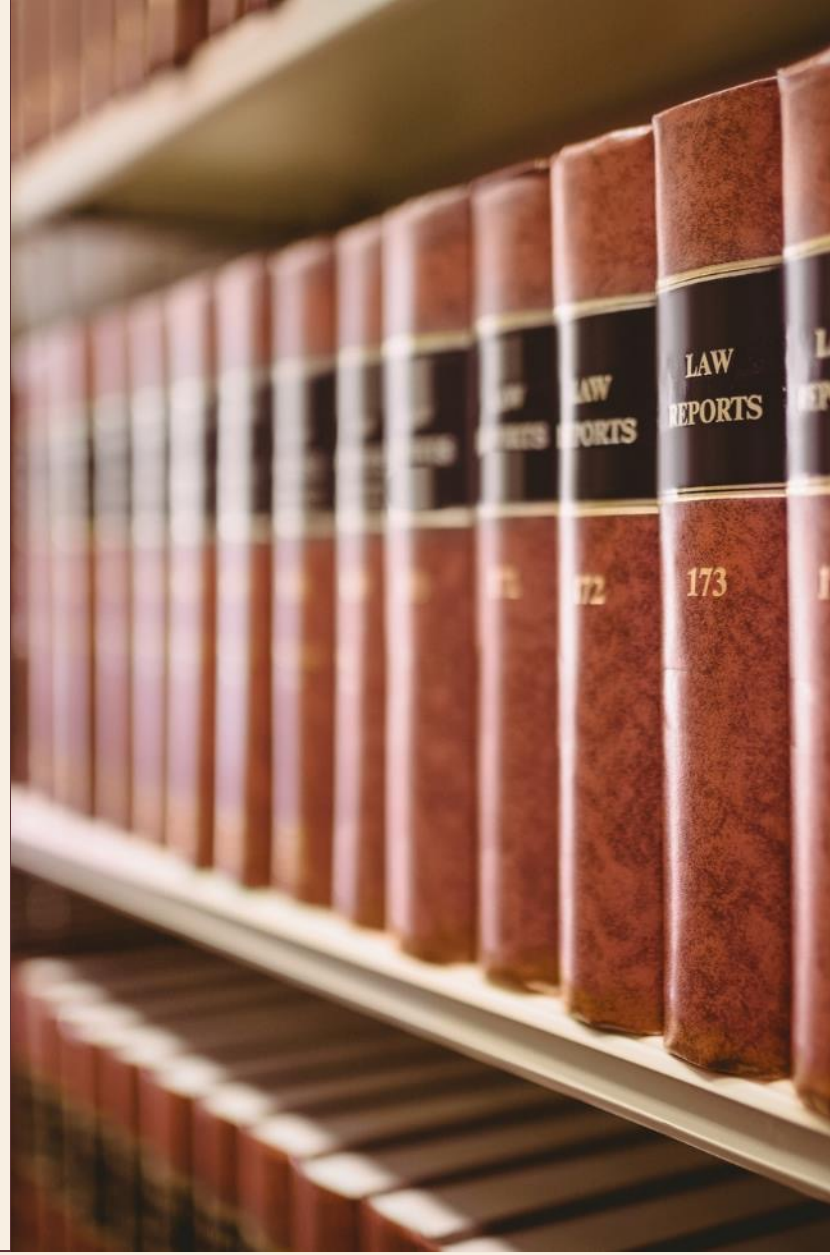
Light Rail Transit Authority versus Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue, G.R. No. 231238, 20 June 2022, 2nd Division, *J.* Leonen.





Opening paragraph of the Decision

"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."



Antecedents / Facts

PRELIMINARY ASSESSMENT NOTICE (PAN)

- The Commissioner of Internal Revenue (CIR), through the Regional Director (RD) of Revenue Region No. (RR) 8 issued the PAN dated **8 December 2008** to LRTA for deficiency taxes for the year 2003.
- LRTA filed a protest to the PAN.

FORMAL ASSESSMENT NOTICE (FAN)

- The RD issued the FAN dated **24 December 2008**.
- LRTA protested the FAN **on 7 January 2009**.

FINAL DECISION ON DISPUTED ASSESSMENT (FDDA)

- The RD issued the FDDA dated **1 April 2011**.
- LRTA received the said FDDA **on 26 April 2011**.
- LRTA appealed *"the Commissioner's"* FDDA **on 6 May 2011**.

Antecedents / Facts *(continuation)*

PRELIMINARY COLLECTION LETTER (PCL)

- Pending resolution of LRTA's appeal, the OIC Revenue District Officer (RDO) of RR 8, Revenue District Office No. 51 issued the PCL dated **20 September 2011**, which LRTA received 2 days later. In the PCL, the RDO demanded payment of the tax deficiencies within 10 days from receipt thereof.
- LRTA then informed the RD that it filed an appeal with the CIR **on 30 September 2011**.

FINAL NOTICE BEFORE SEIZURE (FNBS)

- Still, the RDO issued the FNBS dated **23 November 2011**, giving LRTA to settle its tax liabilities within 10 days from receipt thereof.
- LRTA (in its letter dated **3 February 2012**) then reiterated that its appeal was still pending with the CIR and that "[it] shall act [on] the matter as soon as [it] receive[s] the Commissioner's decision on [its] appeal."

WARRANT OF DISTRAINT AND/OR LEVY (WDL)

- The WDL dated 5 March 2012 was issued, and received by LRTA **on 17 May 2012**.
- LRTA then seek reconsideration of the WDL and [its] tax liability.

Antecedents / Facts *(continuation)*

RDO'S LETTER

- Thru the letter (dated **4 April 2013**), the RDO forwarded the case docket to a Revenue Officer to pursue the reinvestigation of LRTA's tax liabilities.
- And LRTA was ordered to present all relevant documents within 60 days for proper re-evaluation of the case.

(2ND) RDO'S LETTER

- In the letter (dated **9 June 2014**), the RDO dropped the reinvestigation of LRTA's case for failure to submit required documents.
- And the RDO declared the findings in the FDDA final and appealable.
- This letter was received **on 17 June 2014**.

RD'S LETTER

- In the letter dated 30 June 2014, the RD, **acting on the 6 May 2011 appeal of LRTA to the CIR**, declared the case final, executory, and demandable for LRTA's failure to submit the required documents.
- LRTA received the said letter **on 12 August 2014**.
- **On 11 September 2014**, LRTA filed a *Petition for Review* before the CTA.

Proceedings before the CTA in Division

- Instead of filing an *Answer*, the BIR moved to dismiss the *Petition* on the ground of lack of jurisdiction. It argued that the reckoning point for filing the *Petition for Review* was **on 17 March 2012** – the day the WDL was received by LRTA, ***not*** **on 12 August 2014** when LRTA received the 30 June 2014 letter of the RD, denying it request for reinvestigation.

- *Resolution dated 2 February 2015* – The CTA in Division agreed with the BIR and granted the *Motion to Dismiss* for lack of jurisdiction. It found that LRTA did not protest the FAN, rendering the assessment final and unappealable.

Proceedings before the CTA in Division *(continuation)*

- LRTA then filed a *Motion for Reconsideration and Motion to Quash WDL*: (1) alleging that it actually filed a protest to the FAN, and attached a copy thereof; (2) maintaining that the reckoning is 12 August 2014, when it received the 30 June 2014 letter of the RD as the CIR's duly authorized representative that denied its 6 May 2011 appeal; and (3) arguing that the BIR could not enforce the WDL, while the case is pending in court.

- *Resolution dated 19 May 2015* – The CTA denied LRTA's *Motion for Reconsideration and Motion to Quash WDL.*

Proceedings before the CTA in Division *(continuation)*

The CTA in Division held:

- Despite the filing of the protest to the FAN, the assessment has become final.
- The FNBS is the decision properly appealable to the CTA, it being the CIR's "final act regarding the request for reconsideration" and that which granted the LRTA the "last opportunity" to pay its deficiency taxes (citing *Commissioner of Internal Revenue vs. Isabela Cultural Corporation* [413 Phil. 376 (2001)], ["*Isabela Cultural* case"]).
- LRTA should have filed its *Petition* within 30 days from receipt of the FNBS. For failing to appeal the same within the reglementary period, the assessment had already attained finality.

Undeterred, LRTA filed *Petition for Review* before the CTA *En Banc.* The latter, however, denied the same for lack of merit in its 5 October 2016 Decision.

Proceedings before the CTA *En Banc*

The CTA *En Banc* held the following:

- As allowed under Section 3.1.5 of RR No. 12-99, LRTA elevated the protest to the CIR. The FDDA said *"cannot yet be considered as final, executory and demandable."*
- This finding notwithstanding, the CTA *En Banc* reckoned the 30-day period for filing a petition for review from **26 April 2011** – the day of receipt of the FDDA, not the day when LRTA received the decision of the CIR on the appeal (*i.e.*, **on 12 August 2014**).
- Since LRTA filed the *Petition for Re*view before the CTA on 11 September 2014, years beyond the 30th day from 26 April 2011, the said *Petition* was deemed belatedly filed, and the assessment final, demandable, and executory. Thus, the CTA may no longer take cognizance of the *Petition*.

Proceedings before the CTA *En Banc (continuation)*

- LRTA then filed a *Motion for Reconsideration*, arguing, *inter alia*, that the BIR's right to assess its deficiency taxes had long prescribed. Particularly, LRTA emphasized that **the PAN** as issued on 8 December 2008, more than 4 years after filing its 2003 income tax return.

- The CTA *En Banc* denied LRTA's *Motion for Reconsideration.* In resolving the prescription argument, the Court alluded to a *Waiver of Defense of Prescription* signed by LRTA on 13 September 2006. Therein, LRTA agreed to extend the period of prescription up to **31 December 2008**. Considering that **the PAN** was issued on 8 December 2008, well within the extended prescriptive period, the right to assess had not yet prescribed.

LRTA then filed its *Petition for Review on Certiorari* before the Supreme Court.

Issues:

1) Whether or not the CTA had jurisdiction over LRTA's *Petition for Review*. Subsumed in this issue is whether or not the FDDA is the final decision of the CIR appealable to the CTA.

2) Whether or not the right of the BIR to assess LRTA of deficiency taxes for the year 2003 had already been prescribed.

Ruling:

LRTA's *Petition for Review on Certiorari* is granted.

Discussion relative to the 1st Issue

- Section 7(a) of RA No. 1125, as amended by RA No. 9282, provides for the exclusive appellate jurisdiction of the CTA.

- "Decisions of the Commissioner in cases involving disputed assessments" means decisions of the CIR on the protest to the assessment, not the assessment itself. The protest may either be a request for reconsideration or a request for reinvestigation, and the decision on the protest, which may also be rendered by a duly authorized representative of the CIR – must be final, *i.e.*, not merely tentative in character.

Discussion relative to the 1st Issue *(continuation)*

- Apart from decisions on disputed assessments, inaction of the CIR in cases involving disputed assessments may likewise be appealed. This is to empower taxpayers who, under the old Tax Code, can be "held hostage by the Commissioner's inaction on [their] protest."

- In the case of a decision on the protest, the appeal must be filed 30 days from receipt of the adverse decision.

Discussion relative to the 1st Issue *(continuation)*

- In the case of inaction on the protest, in *RCBC vs. CIR* [550 Phil. 316 (2007)] and *Lascona Land Co., Inc. vs. CIR* [683 Phil. 430 (2012)] that a taxpayer may either:

(1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessment; or

(2) await the final decision of the CIR on the disputed assessments and appeal such final decision of the CTA within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the CIR to act on the disputed assessment had already expired.

- These options are mutually exclusive and resort to one bars the application of the other.

Discussion relative to the 1st Issue *(continuation)*

- Here, **there was inaction** on the part of the respondent (CIR) on the petitioner's appeal of the FDDA. (???)

- Under the circumstances, petitioner genuinely chose to await the CIR's final decision on its appeal. The option was made in good faith, not as an afterthought or "legal maneuver" to claim that the assessment had not yet become final. This shown in LRTA's replies to the RDO.

- LRTA filed the *Petition for Review* with the CTA only after the issuance of the 30 June 2014 letter that decided its 6 May 2011 appeal to the Office of the CIR.

Discussion relative to the 1st Issue *(continuation)*

- Considering that LRTA awaited the decision of the CIR on its appeal, it is immaterial that it filed its *Petition for Review* beyond the 180-day period for the BIR to act on disputed assessments (refer to the *Lascona* case).

- Contrary to the CTA *En Banc*'s ruling, the FDDA cannot be considered as the decision appealable to the CTA under Section 7(a)(1) of RA 1125, as amended. This interpretation will render nugatory the remedy of appeal to the Office of the CIR of the denial of protest issued by his or her duly authorized representative, a remedy which was properly and timely availed of by LRTA.

Discussion relative to the 1st Issue *(continuation)*

- Subsection 3.1.5 of RR No. 12-99, **in effect when the assessment against LRTA was issued**, provided:

> 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.

Discussion relative to the 1st Issue *(continuation)*

- Subsection 3.1.5 of RR No. 12-99 is clear that if the protest is elevated to the CIR [within 30 days from the receipt of the final decision of the CIR'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."

- The FDDA was timely elevated to the CIR, hence, it never became final, executory, and demandable.

Discussion relative to the 1st Issue *(continuation)*

- Neither can the 30-day period for filing a petition for review be reckoned from LRTA's receipt of any of the following issuances: (i) PCL, (ii) FNBS, (iii) WDL, (iv) 4 April 2013 letter reconsidering the issuance of the WDL, and (v) 9 June 2014 letter dropping the request for reconsideration of the WDL.

- Like the FDDA, all of these were not final decisions on the appeal by the CIR. They remained tentative given the pendency of LRTA's appeal with the Office of the CIR.

- More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise.

Discussion relative to the 1st Issue *(continuation)*

- To repeat, the assessment was still pending appeal with the Office of the CIR when these issuances were made.

- The PCL, the FNBS, the WDL, the 4 April 2013 letter, and the 9 June 2014 letter, all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.

- The *Isabela Cultural* case **cannot** be made basis to claim that the FNBS is the final decision on the protest appealable to the CTA. When the said case was promulgated in 2001, Section 7 of RA No. 1125 had yet to be amended by RA No. 9282 to add **inactions** of the CIR as appealable to the CTA.

Discussion relative to the 1st Issue *(continuation)*

- Moreover, the SC had yet to promulgate the *RCBC* and *Lascona* cases, where it was clarified that taxpayers have the option to await the decision of the CIR in protests of disputed assessments before they file an appeal with the CTA.

- In other words, in *Isabela Cultural*, the taxpayer still had no choice of awaiting the decision of the CIR on its protest. This is why in *Isabela Cultural*, the SC considered the FNBS as the CIR's decision on the protest. More so because it was the only response Isabela Cultural Corporation received from the CIR after it had filed its protest.

Discussion relative to the 1st Issue *(continuation)*

- Unlike here, where the taxpayer filed an appeal with the CIR, no similar appeal was made in the *Isabela Cultural* case. Hence, in *Isabela Cultural*, there was no final decision on the appeal by the CIR to await, and the FNBS was correctly deemed the final decision on the protest.

- To insist that LRTA should have considered the FNBS or the WDL as the decision appealable to the CTA *En Banc* (???) is to deprive LRTA of the remedy of awaiting the decision of the Office of the CIR on its appeal.

- The 30 June 2014 letter denying LRTA's appeal was the final decision on the protest that is appealable to the CTA. Since the *Petition for Review* was filed within the 30-day period to appeal to the CTA, the latter has jurisdiction.

The 2nd Issue

Whether or not the right of the BIR to assess LRTA of deficiency taxes for the year 2003 had already been prescribed.

Discussion relative to the 2nd Issue

- The question of whether the assessment had prescribed is premised on a question of fact, i.e., the existence of the *Waiver of Defense of Prescription* signed by LRTA on 13 September 2006. The SC, not being a trier of facts, will not belabor on this issue.

- In any case, the subject PAN states, in effect, the existence of the said *Waiver*. LRTA did not controvert this in its protest to the PAN. Hence, the statement in the PAN is deemed admitted by LRTA.

- LRTA, having allowed the extension of the prescriptive period under Sections 203 and 222 of the Tax Code up to 31 December 2008, the assessment made on 8 December 2008, was valid.

Summary (Jurisprudence)

CTA'S JURISDICTION

- While the administrative appeal is pending, **(1)** the PCL, **(2)** the FNBS, **(3)** the WDL, **(4)** the 4 April 2013 letter (reconsidering the WDL issuance), **(5)** the 9 June 2014 (dropping the request for reconsideration of the WDL), and **(6)** the RD's FDDA, are not appealable to the CTA, as they remain tentative, and there is yet no "delinquent taxes" to speak of.
- The appealable action is the 30 June 2014 letter, denying the administrative appeal, albeit issued by a subordinate of the CIR.

PRESCRIPTION

- In case a taxpayer fails to controvert a statement made in the PAN, the same is deemed admitted by such taxpayer.
- The PAN may be considered as an "assessment" for purposes of the prescriptive periods under Sections 203 and 222 of the Tax Code.

Implications of the rulings in the *LRTA* case

- The concept of constructive or implied denial by the CIR is no longer present, while the administrative appeal is pending. The concerned taxpayer must wait for the decision thereon, before appealing to the CTA.

- In any case, the denial by the CIR may be done by a subordinate official.

- During the pendency of the administrative appeal, there is yet no demandable and/or collectible “delinquent taxes”.

- The prescriptive period under Section 203 of the NIRC of 1997 may be reckoned from the issuance of the PAN.

Examination/Analysis of the *LRTA* case

ALWAYS BEAR THIS IN MIND:

Article VIII, Section 4(3), 1987 Constitution:

"...no **doctrine or principle of law** laid down by the court in a decision rendered *en banc* or in division may be modified or reversed by **the court sitting *en banc***."

Since the *LRTA* case was rendered by the Supreme Court (SC) in Division (*i.e.*, the Second Division), the said case could not have modified or reversed **any doctrine or principle of law** earlier laid down by the SC, whether in division or *en banc*.

Examination/Analysis of the *LRTA* case *(continuation)*

Thus, it could not have modified or reversed the doctrine or principle of law laid down by the Supreme Court in *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 162852, 16 December 2004), *viz.*:

"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessment or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid**..."

Examination/Analysis of the *LRTA* case *(continuation)*

Moreover, it could not have modified or reversed the doctrine or principle of law laid down by the SC in *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.* (G.R. No. 225809, 17 March 2021), penned by J. Leonen (the ponente of the *LRTA* case), *viz.*:

"...in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with **distraint and levy** or institutes an action for collection in the ordinary courts, this Court has considered this is an implied denial. The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it was notified of the **warrant** or collection suit."

Examination/Analysis of the *LRTA* case *(continuation)*

Also, it could not have modified or reversed the doctrine or principle of law of the SC in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* (G.R. Nos. 201398, etc., 3 October 2018), likewise penned by J. Leonen, *viz.*:

"The Commissioner did not act on Avon's request for reconsideration. Thus, Avon was constrained to treat the Collection Letter (issued by the LTCED) as denial of its protest.

xxx

This Court holds that the Collection Letter dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. The Collection Letter dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice."

Examination/Analysis of the *LRTA* case *(continuation)*

Also, it could not have modified or reversed the doctrine or principle of law of the SC in *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.* (G.R. No. 227544, 22 November 2017), also penned by J. Leonen, *viz.*:

"Considering the functions and effects of a PAN vis a vis a FAN, it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN upon the taxpayer."

Examination/Analysis of the *LRTA* case *(continuation)*

In deciding the *LRTA* case, the SC relied on Subsection 3.1.5 of RR No. 12-99, which was: ***"in effect when the assessment against petitioner was issued"***:

> 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.

Examination/Analysis of the *LRTA* case *(continuation)*

The *LRTA* case is grounded on Subsection 3.1.5 of RR No. 12-99 (as it is originally worded).

Note that Subsection 3.1.5 of RR No. 12-99 was substantially amended by RR No. 18-2013 (which was published in the Manila Bulletin on 30 November 2013). Specifically, after the said amendment, the following provision is no longer present:

"...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."

(Refer to RR No. 18-2013)

Examination/Analysis of the *LRTA* case *(continuation)*

Thus, it is my humble opinion that the *LRTA* case, insofar as it applied Subsection 3.1.5 of RR No. 12-99, is **not** applicable to cases after the effectivity of RR No. 18-2013.

Therefore, it is my humble position that:

- the effect of the holding in the *Isabela Cultural* case would stand (again) upon the effectivity of RR No. 18-2013.
- the *"delinquent taxes"* exists already upon the issuance of the assessment, pursuant to Section 6 of the NIRC of 1997:

"The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative."

Thank You