CTA Form No. 8

22-000467-0054

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10988

DELICIOUS KAKANIN ENTERPRISES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, AND REGIONAL DIRECTOR OF REVENUE REGION NO. 5, CALOOCAN CITY,
Respondents.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. MERVIN JOHN P. MERCADO
ATTY. CARLO LUIGI M. SORIANO
Bureau of Internal Revenue - Revenue Region No. 5
Legal Division, 9th Floor, New BIR Building
140 Calaanan, EDSA, Caloocan City

REGIONAL DIRECTOR OF REVENUE
REGION NO. 5, CALOOCAN CITY
BIR Regional Office, New BIR Building
No. 140 Bo Kalaanan, EDSA, Caloocan City

DELA ROSA CASILLA & VIÑAS
3rd Floor, Power Realty Building
1012 Arnaiz Ave. San Lorenzo
Makati City

GREETINGS:

You are hereby notified by these presents that on **March 12, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 17, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SPECIAL FIRST DIVISION

DELICIOUS KAKANIN ENTERPRISES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, AND REGIONAL DIRECTOR OF REVENUE REGION NO. 5, CALOOCAN CITY,
Respondents.

CTA CASE NO. 10988

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 12 2026; 4:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Delicious Kakanin Enterprises Corporation (**petitioner**), pursuant to Section 3(a),[2] Rule 8 in relation to Section 3(a)(1),[3] Rule 4 of the Revised Rules of

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[1] Filed on 27 September 2022, Division Docket, pp. 8-24.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

the Court of Tax Appeals (**RRCTA**).[4] Here, petitioner essentially prays for the cancellation of its alleged deficiency tax liabilities for calendar year (**CY**) 2018 amounting to ₱3,190,043.55, inclusive of surcharges and interests.[5]

PARTIES TO THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with registered address at 13 Escanilla St., Concepcion, Malabon City.[6] As its name connotes, it is primarily engaged in the manufacturing of food products and beverages.[7] Petitioner is registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer Identification Number (**TIN**) 006-594-261-000 under Revenue District Office (**RDO**) No. 26 – Malabon-Navotas.[8]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

On 03 October 2019, petitioner received Letter of Authority No. LOA-026-2019-00000546 / eLA201600060168 (**First LOA**) which authorized Revenue Officer (**RO**) Eunice Ann Libaton (**Libaton**) and Group Supervisor (**GS**) Luisa Bersaba (**Bersaba**) to examine petitioner's

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(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 Code or other laws administered by the Bureau of Internal Revenue[.]

4 A.M. No. 05-11-07-CTA.

5 See Final Decision on Disputed Assessment dated 03 November 2021, Exhibit "R-11", BIR Records, pp. 126-129.

6 See Articles of Incorporation dated 19 December 2006, Exhibit "P-2", Division Docket, p. 352.

7 Id., p. 351.

8 See BIR Certificate of Registration dated 22 December 2006, Exhibit "P-4", id., p. 360.

books of accounts and other accounting records for CY 2018.[9] The LOA was accompanied by a Checklist of Requirements (**Checklist**) that petitioner was required to submit.[10]

After a supposed non-compliance from petitioner's end, respondent issued a First Request for Presentation of Records dated 15 October 2019 (**First Notice**) reiterating its request for documents.[11] Still, with no documents forthcoming, respondent threatened petitioner that a Subpoena *Duces Tecum* (**SDT**) will be issued against it should it continuously fail to submit the requested documents (**Second and Final Notice**).[12]

Despite the warning, petitioner did not comply nor respond. Consequently, petitioner received an SDT on 03 March 2020.[13] At this instance, petitioner finally sent respondent a request for the extension of the deadline of submission of the requested documents.[14]

Later, respondent conducted the audit and, thereafter, issued the Notice for Informal Conference (**NIC**) which petitioner received on 23 September 2020.[15] In the NIC, respondent invited petitioner to an informal conference for the parties to discuss the initial assessment for CY 2018 amounting to ₱3,727,173.80, composed of:

Tax Type	Basic Tax	Interest	Compromise	Total
Income Tax	₱2,176,017.67	₱398,211.23	₱30,000.00	₱2,604,228.90
VAT	901,906.78	189,400.42	30,000.00	1,121,307.20
EWT	525.00	112.70	1,000.00	1,637.70
Total	₱3,078,449.45	₱587,724.35	₱61,000.00	₱3,727,173.80

9 See LOA dated 24 September 2019, Exhibit "R-1", BIR Records, p. 2.
10 See Checklist of Requirements dated 25 September 2019, id., p. 1.
11 See First Request for Presentation of Records received by petitioner on 28 October 2019, Exhibit "R-2", id., p. 3.
12 See Second and Final Notice dated 15 November 2019 received by petitioner on 09 December 2019, Exhibit "R-3", id., p. 4.
13 See SDT No. RR5-3-2020-00042 dated 30 January 2020, id., p. 27. See also Memorandum dated 03 March 2020, id., p. 29.
14 See Letter dated 04 March 2020, id., p. 30.
15 See Notice for Informal Conference, id., pp. 58-59.

On 01 February 2021, respondent issued the Preliminary Assessment Notice[16] (**PAN**) finding petitioner liable for deficiency taxes for CY 2018 amounting to ₱2,965,132.60, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest[17]	Compromise	Total
Income Tax	₱1,099,394.66	₱-	₱237,469.25	₱40,000.00	₱1,376,863.91
VAT	902,397.33	-	218,652.11	30,000.00	1,151,049.44
EWT	186,164.47	46,541.12	46,025.98	20,000.00	298,731.56
IAET	86,135.96	21,533.99	10,817.73	20,000.00	138,487.69
Total	₱2,274,092.42	₱68,075.11	₱512,965.07	₱110,000.00	₱2,965,132.60

Subsequently, on 29 March 2021, respondent issued the Formal Letter of Demand (**FLD**) and Final Assessment Notices (**FANs**), reiterating the findings in the PAN.[18] With the interest adjustment, petitioner was found liable for deficiency taxes for CY 2018 amounting to ₱2,986,066.72, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest[19]	Compromise	Total
Income Tax	₱1,099,394.66	₱-	₱247,589.70	₱-	₱1,346,984.36
VAT	902,397.33	-	226,959.11	-	1,129,356.44
EWT	186,164.47	46,541.12	47,739.71	-	280,445.29
IAET	86,135.96	21,533.99	11,610.66	-	119,280.61
Compromise	-	-	-	110,000.00	110,000.00
Total	₱2,274,092.42	₱68,075.11	₱533,899.18	₱110,000.00	₱2,986,066.72

In response to the FLD/FAN, petitioner filed a Protest (Request for Reinvestigation) on 20 April 2021.[20] In its Protest, petitioner claimed that it did not receive any letter regarding the audit and manifested that it was willing to present its books of accounts and other records to substantiate its expenses and present records of its sales and purchases.[21]

16 See Preliminary Assessment Notice with Details of Discrepancies received by petitioner on 04 February 2021, Exhibit "R-4", id., pp. 84-87. See also Acknowledgement of Receipt, Exhibit "R-5", id., p. 83.

17 Computed up to 31 January 2021.

18 **See** Formal Letter of Demand with Details of Discrepancies received by petitioner on 21 April 2021, id., pp. 94-97. **See also** Formal Assessment Notices likewise received by petitioner on 21 April 2021, id., pp. 93, 98-101. **See further** Acknowledgment of Receipt dated 12 April 2021, Exhibit "R-7", p. 91.

19 Computed up to 28 February 2021.

20 See Letter dated 16 April 2021, Exhibit "R-8", id., p. 105.

21 Id.

Respondent granted the Request for Reinvestigation and gave petitioner sixty (60) days from the filing of the Protest to submit the necessary documents.[22]

In the meantime, on 29 July 2021, petitioner received LOA No. LOA-026-2021-00000274 / SN: eLA201700097768 (**Second LOA**) replacing the First LOA.[23] In the Second LOA, RO Restituto Magtoto (**Magtoto**) and GS Alile Jipus (**Jipus**) were authorized to continue the investigation of petitioner's books of accounts for CY 2018. Respondent then proceeded to reinvestigate but was constrained to reiterate the assessments in the FLD/FAN because petitioner failed to submit any document within the prescribed period.[24]

Thus, 03 November 2021, respondent issued the Final Decision on Disputed Assessment (**FDDA**) reiterating the assessments in the FLD/FAN.[25] With the upward adjustment in the interest, petitioner was found liable for deficiency taxes amounting to ₱3,190,043.55, determined as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	₱1,099,394.66	₱-	₱341,203.91	₱40,000.00	₱1,480,598.57
VAT	902,397.33	-	303,798.86	30,000.00	1,236,196.19
EWT	186,164.47	46,541.12	63,591.74	20,000.00	316,297.33
IAET	86,135.96	21,533.99	29,281.51	20,000.00	156,951.46
Total	₱2,274,092.42	₱68,075.11	₱737,876.02	₱110,000.00	₱3,190,043.55

On 29 April 2022, respondent issued a Warrant of Distraint and/or Levy (**WDL**)) authorizing the distraint and levy of petitioner's real and personal properties to answer for the assessment in the FDDA.[26]

Later, on 02 June 2022, respondent also issued several Warrants of Garnishment (**WOGs**) addressed to petitioner's banks.[27]

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22 See Letter dated 06 May 2021, Exhibit "R-9", id., p. 106.

23 See LOA No. LOA-026-2021-00000274 / SN: eLA201700097768 dated 21 July 2021, Exhibit "R-10", id., p. 112. See also Letter dated 08 June 2021, id., p. 110.

24 See Letter dated 20 September 2021 and received by petitioner on 23 September 2021, id., p. 119.

25 See Final Decision on Disputed Assessment received by petitioner on 12 November 2021, Exhibit "R-11", id., pp. 126-129. See also Acknowledgement of Receipt dated 12 November 2021, id., p. 125.

26 See Warrant of Distraint and/or Levy (WDL) No. RR5-WDL-04-26-22-2965(026) dated 29 April 2022, Exhibit "R-13", p. 145.

27 See Warrants of Garnishment, Exhibit "R-15" to "R-15-22", id., pp. 147-157, 173-221.

Finally, on 16 August 2022, respondent wrote three (3) separate collection letters addressed to petitioner's incorporators, as follows: (1) Norma Castillo Peralta; (2) Denise Dianne David Tabije (**Tabije**); and (3) Elenita David Jacinto (**Jacinto**), Josefina David Sta. Ana, and Alfredo Sta. Ana.[28]

On 26 August 2022, Tabije, who also happened to be petitioner's Corporate Secretary, received the collection letter addressed to her (**Collection Letter**).[29] This prompted petitioner to file the instant petition on 27 September 2022.[30] The case was docketed as CTA Case No. 10988 and raffled to the Court's First Division.

PROCEEDINGS BEFORE THE COURT

In its petition, petitioner sought the cancellation of the FLD/FAN, the WDL, and the Collection Letter on the grounds that (1) the PAN and the FLD/FAN were not personally served on petitioner; (2) the persons who received the PAN and the FLD/FAN were not duly authorized; (3) the Collection Letter was not served at petitioner's registered address; and (4) the FLD/FAN did not constitute a definite demand.[31]

Respondent timely filed his or her Answer with Motion to Dismiss on 04 April 2023.[32] In the Answer, respondent narrated how its personnel conducted the audit in full observance of petitioner's right to due process. Respondent adds that since the FDDA had become final and executory, the issuance of the WDL and the Collection Letter was only proper. On the other hand, respondent sought the dismissal of the petition for having been filed out of time.

Respondent then elevated the BIR records.[33]

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28 See Collection Letters all dated 16 August 2022, id., pp. 225-227.

29 See Collection Letter dated 16 August 2022 addressed to Denise Dianne David Tabije, id., p. 226.

30 See Petition for Review, supra at note 1.

31 Id.

32 See (1) Answer with Motion to Dismiss, Division Docket, pp. 130-140; (2) Summons dated 01 February 2023, id., p. 121; (3) Motion for Extension of Time To File Answer to Petition for Review with Entry of Appearance as Counsel filed on 13 February 2023, id., pp. 124-126; and (4) Resolution dated 27 February 2023 allowing respondent to file his or her Answer until 04 April 2023, id., pp. 128-129.

33 See *Ex-Parte* Manifestation and Compliance with Leave of Court, id., pp. 199-200.

Petitioner opposed the Motion to Dismiss.[34] Petitioner argued that the petition was filed on time since it was filed within 30 days from the receipt of the Collection Letter on 25 August 2022. The Court denied the Motion to Dismiss finding that the petition was indeed filed within 30 days from petitioner's receipt of the Collection Letter.[35]

Subsequently, the parties underwent mediation from 15 August 2023 to 14 October 2023 but failed to reach a compromise.[36]

Following the unsuccessful mediation, the Pre-Trial Conference was set on 28 February 2024.[37] After the parties filed their Pre-Trial Briefs,[38] pre-trial proceeded as scheduled on 28 February 2024.[39] With the filing of the parties' Joint Stipulation of Facts and Issue (**JSFI**) and the issuance of the Pre-Trial Order on 17 May 2024, the pre-trial stage of the proceedings was deemed terminated.[40]

In the trial that thereafter ensued, petitioner presented Tabije.

On the witness stand, Tabije, petitioner's incorporator as well as its Corporate Secretary, testified that Marissa Gualberto (**Gualberto**), one of petitioner's several food handlers, received the PAN. In similar manner, the FLD/FAN was served on another food handler, Charie Libao (**Libao**). Tabije explained that as food handlers, Gualberto and Libao are responsible for the preparation of the food that petitioner sells. They are also tasked to make sure that petitioner's food products are of good quality. She added that the Collection Letter was served at No. 1 Congressional Avenue Ext., Bahay Toro, Quezon City, which was not petitioner's registered address.[41]

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34 See Petitioner's Comment/Opposition filed on 08 May 2023, id., pp. 204-209.

35 See Resolution dated 26 May 2023, id., pp. 216-217.

36 **See** Mediation Schedule filed on 08 August 2023, id., p. 220. **See also** Request for Extension filed on 05 September 2023 and Resolution dated 26 September 23 extending the mediation period until 14 October 2023, id., pp. 223-226. **See further** the Mediator's report filed on 08 November 2023, id., pp. 228-231.

37 See Notice of Pre-Trial Conference dated 17 November 2023, id., pp. 234-236.

38 See petitioner's Pre-Trial brief filed on 21 February 2024, id., pp. 238-249. See also respondent's Pre-Trial Brief filed on 23 February 2024, id., pp. 251-254.

39 See Order dated 28 February 2024, id., pp. 262-264.

40 See Joint Stipulation of Facts and Issues filed on 25 March 2024, id., pp. 279-289. See also Pre-Trial Order dated 17 May 2024, id., pp. 309-326.

41 See Judicial Affidavit (Denise Dianne David Tabije) subscribed on 23 September 2022, Exhibit "P-13", id., pp. 107-117; see TSN dated 28 May 2024.

On cross-examination, Tabije testified that the food handler who received the First LOA had referred the same to petitioner's management but that was not the case for Gualberto and Libao who received the PAN and FLD/FAN, respectively.[42] She stated that during the period of the audit, petitioner was operating with a skeletal workforce because of the pandemic.[43] It was only upon petitioner's receipt of the WDL that they came to know of the PAN and FLD/FAN.[44] When confronted with the Protest (Request for Reinvestigation) to the FLD/FAN, Tabije claimed that the she was not aware of the existence of the Protest.[45] She also confirmed that Jacinto, the signatory of the Protest, was petitioner's President.[46]

No redirect examination was conducted.[47]

Upon clarificatory questions from the Court, Tabije testified that a staff received the Collection Letter at No. 1 Congressional Avenue, where she holds office for other businesses.[48] She again denied knowledge of the Protest and surmised that it was probably Jacinto who asked petitioner's bookkeeper to file it.[49] Further, she clarified that they did not object to the service of the First LOA because the particular food handler who received it was the team leader or in-charge.[50] Lastly, she stated that there were about six (6) food handlers working at petitioner's registered address and while its officers reported to the same office, the pandemic forced them to report to the office only once or twice a week.[51]

With the presentation of its sole witness, petitioner proceeded to file its Formal Offer of Evidence (**FOE**), offering Exhibits "P-1" to "P-13-1", inclusive of sub-markings.[52] Respondent interposed no objections to the FOE.[53] After review and consideration, the Court admitted the offered exhibits.[54]

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[42] Id., TSN dated 28 May 2024, p. 11.
[43] Id., p. 12.
[44] Id. p. 13.
[45] Id., p. 16.
[46] Id., p. 15.
[47] Id., p. 17.
[48] Id., pp. 18-21.
[49] Id., p. 26-28.
[50] Id., pp. 33-34.
[51] Id. pp. 32-33.
[52] See petitioner's FOE filed on 10 June 2024, Division Docket, pp. 343-349.
[53] See Comment to the Formal Offer of Evidence filed on 18 June 2024, id., pp. 418-422
[54] See Resolution dated 12 July 2024, id., pp. 429-430.

When it was respondent's turn to present evidence, RO Libaton, RO Magtoto, GS Jipus, and RO Roberto Damian (**Damian**) were presented.

RO Libaton took the witness stand first where she declared that she was authorized under the First LOA to examine petitioner's book of accounts for CY 2018. In such capacity, she conducted the audit from the issuance of the First Notice until the issuance of the respondent's Letter dated 06 May 2021 which granted the Protest (Request for Reinvestigation) to the FLD/FAN and allowed petitioner to submit supporting documents within 60 days from receipt thereof. Afterwards, the case was transferred to another RO. She, thus, identified among others, the First LOA, First Notice, Second and Final Notice, PAN, FLD/FAN, Protest, and respondent's Letter dated 06 May 2021.[55]

On cross-examination, RO Libaton confirmed that she personally served the PAN and the FLD/FAN on 04 February 2021 and 21 April 2021, respectively. As to the proof that the recipients thereof were duly authorized, she explained that when she went to petitioner's registered address, she asked for someone authorized by petitioner to receive the said documents.[56]

On redirect examination, RO Libaton confirmed that the First LOA was served at petitioner's registered address at No. 13 Escanilla Street, Concepcion, District 1, Malabon City.[57] Moreover, the person who received the First LOA indicated in the accompanying Checklist of Requirements that he/she was petitioner's HR Manager.[58]

No re-cross examination was conducted.[59]

Next to take the witness stand was RO Magtoto who, by virtue of the Second LOA, took over the audit petitioner's books for CY 2018 from RO Libaton. By way of his Judicial Affidavit, he identified and testified

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55 See Judicial Affidavit of Eunice Ann Libaton subscribed on 31 March 2023, Exhibit "R-16", id., pp. 151-158.
56 TSN dated 27 August 2024, pp. 10-27.
57 Id., pp. 27-28.
58 Id., pp. 28-29.
59 Id., p. 30.

on the issuance of the Second LOA and the subsequent issuance of the FDDA.[60]

On cross-examination, RO Magtoto testified that he personally went to petitioner's registered address to serve the Second LOA and the FDDA. He then saw Libao and informed her that there was a letter for petitioner. He added that he served the Second LOA and the FDAA on Libao without asking for further proof of authorization.[61]

Upon redirect examination, RO Magtoto identified the Protest (Request for Reinvestigation) to the FLD/FAN.[62]

On re-cross examination, he confirmed that in the Protest, petitioner manifested that it did not receive any letter regarding the audit and if given a chance, petitioner was willing to present its books of accounts and other pertinent records.[63]

GS Jipus, on the other hand, testified that together with RO Magtoto, she was authorized under the Second LOA to conduct petitioner's audit for CY 2018. By way of her Judicial Affidavit, she corroborated RO Magtoto's testimony regarding the issuance and service of the Second LOA and FDDA.[64]

On cross-examination, GS Jipus testified that she did not participate in the FDDA's preparation as well as the actual service of the Second LOA.[65] However, upon redirect examination, she clarified that after the RO conducts his investigation, she reviews the RO's report and then signs it for transmittal to the Assessment Division.[66] On re-cross examination, she stated that in reviewing assessments, she relies on the RO's findings and case records.[67]

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60 See Judicial Affidavit of Restituto Magtoto subscribed on 31 March 2023, Exhibit "R-17", Division Docket, pp. 146-150.
61 TSN dated 27 August 2024, pp. 41-43.
62 Id., 46-47.
63 Id., pp. 54-55.
64 See Judicial Affidavit of Alile Jipus subscribed on 31 March 2023, Exhibit "R-18", Division Docket, pp. 141-145.
65 TSN dated 27 August 2024, pp. 65-67.
66 Id., pp. 67-69.
67 Id., pp. 71-73.

Respondent then presented his or her last witness, RO Damian, who testified by way of his Judicial Affidavit. As the Seizure Agent assigned to enforce administrative collection remedies against petitioner, he testified that he caused the service of the WDL on petitioner and of the WOGs to various banks.[68]

During cross-examination, he testified that he attempted to personally serve the WDL on petitioner but was unable to find anyone at its registered address. Thus, on the very same day, he resorted to constructive service. He further served the WDL through accredited courier (*i.e.*, LBC).[69] As to the WOGs, he testified that he personally served the same upon the banks.[70] On redirect examination, he stated that after the service of the WDL, petitioner's representative went to their office to inquire about and request copies of the case docket.[71] No re-cross examination followed.[72]

Upon clarificatory questions from the Court, RO Damian explained that he served the WDL through an accredited courier, pursuant to then-prevailing regulations.[73]

Subsequently, on 25 November 2024, respondent filed his or her FOE offering Exhibits "R-1" to "R-19-1", with sub-markings.[74] Over petitioner's objections, the Court admitted the documents, except for Exhibits "R-15-Series",[75] which were denied for not being found in the records of the case.[76]

Finally, petitioner filed its Memorandum on 20 February 2025 while respondent filed his or her Memorandum on 25 February 2025.[77] The Court then submitted the case for decision on 12 March 2025.[78]

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68 See Judicial Affidavit of Roberto G. Damian Jr., Exhibit "R-19", Division Docket, pp. 272-275.

69 TSN dated 12 November 2024, pp. 9-23.

70 Id., pp. 24-26.

71 Id., pp. 28-29.

72 Id., p. 29.

73 Id., p. 32.

74 See Formal Offer of Respondent's Evidence/Exhibits, Division Docket, pp. 447-455.

75 Exhibits "R-15-Series" refer to Warrants of Garnishment (WOGs) upon various banks.

76 See Comments/Objections (To Respondent's Formal Offer of Evidence) filed on 26 November 2024, id., pp. 456-469. See also Resolution dated 21 January 2025, id., pp. 496-497.

77 See petitioner's Memorandum, id., pp. 498-530. See also respondent's Memorandum, id., pp. 533-547.

78 See Notice of Resolution dated 12 March 2025, id., p. 549.

ISSUES

As the parties agreed on during the pre-trial, the issues forwarded for the Court's resolution are —

I.
WHETHER THE FINAL DECISION ON DISPUTED ASSESMENT (FDDA) DATED 03 NOVEMBER 2021 HAD BECOME FINAL, EXECUTORY, AND DEMANDABLE;

II.
WHETHER THE FINAL ASSESSMENT NOTICE/FORMAL LETTER OF DEMAND (FAN/FLD) DATED 29 MARCH 2021 IS VOID; AND

III.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE, AND REGIONAL DIRECTOR OF REVENUE REGION NO. 5, CALOOCAN CITY MAY ENFORCE COLLECTION OF PETITIONER DELICIOUS KAKANIN ENTERPRISES CORPORATION'S ALLEGED DEFICIENCY TAX ASSESSMENTS THROUGH WARRANT OF DISTRAINT AND/OR LEVY (WDL) AND OTHER MODES OF COLLECTION.[79]

ARGUMENTS

In support of the petition, petitioner insists on the grounds below as reasons for the cancellation of the assessment against it.

First, petitioner argues that while substituted service is allowed in serving the PAN and FLD/FAN, respondent should show proof first that personal service was not practicable. Even if substituted service was warranted, the PAN and the FLD/FAN should have been left with a clerk or with a person having charge of petitioner's premises. Gualberto and Libao, as food handlers, are neither clerk nor persons charged with authority to act on behalf of petitioner.[80]

Petitioner adds that the FLD/FAN is also void since the term "requested to pay" does not constitute a definite demand to pay and

[79] See Pre-Trial Order dated 17 May 2024, supra at note 40.
[80] Petitioner's Memorandum, supra at note 77, pp. 510-516.

negates the imperative nature of the assessment.[81] Furthermore, petitioner argues that the FDDA had yet to become final, executory, and demandable because there is no evidence that it was received by petitioner's authorized representative. It is equally void without a valid assessment (*i.e.*, PAN and FLD/PAN) to anchor on.[82]

Lastly, petitioner avers that the Collection Letter was served at No. 1 Congressional Avenue Ext., Bahay Toro Quezon City when its registered address is at 13 Escanilla Street, Concepcion, District 1, Malabon City. The former cannot be considered a known address since business activities are not conducted there. To make matters worse, respondent again, without justification, served the WDL and Collection Letter *via* substituted service.[83]

On the other hand, respondent points out that the First LOA was likewise served upon another food handler deployed at petitioner's registered address. However, petitioner did not assail the validity of the First LOA and even admitted that it was forwarded to its bookkeeper. Petitioner cannot now reject the PAN and FLD/FAN which were served in the same manner as the First LOA. In fact, petitioner's President was able to file a Protest (Request for Reinvestigation) to the FLD/FAN which respondent granted giving petitioner the opportunity to submit supporting documents.[84]

In addition, respondent claims that from inception of the audit (when it served the First LOA to a food handler), petitioner never advised respondent that its food handlers were not authorized to receive communications from the BIR. On the contrary, petitioner proceeded to correspond with respondent.[85]

Lastly, respondent avers that petitioner failed to present sufficient evidence to assail the substantive aspect of the PAN and FLD/FAN. Therefore, the presumption of regularity of assessment must prevail.[86]

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81 Id., pp. 519-520.
82 Id., pp. 520-522.
83 Id., pp. 522-526.
84 Respondent's Memorandum, supra at note 77, pp. 537-544.
85 Id., p. 544-545.
86 Id., p. 545.

RULING OF THE COURT

At the outset, the Court stresses that, while it made a preliminary finding that the Court has jurisdiction over the case, after a second hard look at the records and the evidence presented in the course of the trial, it is constrained to dismiss the petition for lack of jurisdiction. Evidently, the instant petition was filed out of time.

THE INSTANT PETITION WAS NOT FILED WITHIN 30 DAYS FROM PETITIONER'S RECEIPT OF THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA).

The Court of Tax Appeals (**CTA**), being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[87] In this connection, Section 11 of the Republic Act (**RA**) No. 1125,[88] as amended by RA 9282,[89] provides for the proper period during which a party may bring an appeal before the CTA, to wit:

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[90]
>
> ...

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87 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

88 AN ACT CREATING THE COURT OF TAX APPEALS.

89 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

90 Italics in the original text.

Section 3(a), Rule 8 of the RRCTA implements the above provision in this wise:

> ...
>
> SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[91]
>
> ...

On the other hand, Section 228 of the NIRC of 1997, as amended, outlines how a taxpayer may administratively protest an assessment issued by the CIR or his or her duly authorized representative and later on, if necessary, appeal the same to the CTA:

> ...
>
> 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[.] ...
>
> ...
>
> 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)

---

[91] Italics in the original text.

> days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[92]
>
> ...

In turn, Section 228 of the NIRC of 1997, as amended is implemented by Revenue Regulations (**RR**) No. 12-99,[93] as amended by RR No. 18-2013.[94] Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides the taxpayer's options on disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> Sec. 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

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92 Italics in the original text.

93 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

94 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> reinvestigation. It may also involve a question of fact or of law or both.
>
> ...
>
> For request 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 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. ...
>
> ...
>
> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.[95]
>
> ...

In applying the foregoing rules, the Supreme Court, in *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[96] and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*,[97] explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
> **1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**

95 Italics in the original text.
96 G.R. No. 208731, 27 January 2016.
97 G.R. No. 221780, 25 March 2019.

> **2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.**
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.[98]

...

In this case, the following are the pertinent dates and events in determining the timeliness of the Petition for Review:

Date	Event
12 April 2021	Petitioner received respondent's FLD/FAN dated 29 March 2021.[99]
20 April 2021	Petitioner filed its Protest (Request for Reinvestigation).[100]
08 June 2021	Respondent informed petitioner that its Protest (Request for Reinvestigation) was granted giving petitioner 60 days therefrom to submit its supporting documents. [101]
23 September 2021	Respondent informed petitioner that it will proceed with the issuance of the FDDA because of petitioner's failure to submit the supporting documents within the prescribed period.[102]
12 November 2021	Petitioner received the FDDA.[103]
27 September 2022	Petitioner filed the instant Petition for Review.[104]

As thoroughly discussed, if the protest is wholly or partially denied by the CIR or his authorized representative, the taxpayer may appeal to the CTA within 30 days from its receipt of the denial of the protest.

98 Citation omitted, italics in the original text and emphasis supplied.
99 See Formal Letter of Demand with Details of Discrepancies and Formal Assessment Notices, supra at note 1.
100 See Letter dated 16 April 2021, Exhibit "R-8", supra at note 20.
101 See Letter dated 08 June 2021, supra at note 23.
102 See Letter dated 20 September 2021, supra at note 24.
103 See Final Decision on Disputed Assessment dated 03 November 2021, Exhibit "R-11", and Acknowledgement of Receipt dated 12 November 2021, supra at note 25.
104 See Petition for Review, supra at note 1.

Here, petitioner received the FDDA issued by the CIR's authorized representative (*i.e.*, the Regional Director of Revenue Region No. 05) on 12 November 2021. In the FDDA, respondent reiterated the assessment in the FLD/FAN and emphasized that such was its "final decision" on the Protest. Thus, petitioner had 30 days from 12 November 2021 within which to appeal either to the CIR or the CTA. Petitioner did neither.

Accordingly, the instant Petition which was filed ten (10) months later on 27 September 2022 — was filed out of time.

THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE (FLD/FAN) AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) WERE VALIDLY SERVED UPON PETITIONER.

RR No. 18-13, which amends RR No. 12-99,[105] outlines the applicable modes of service of assessment notices:

> ...
>
> 3.1.6 *Modes of Service*. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:**
>
> **The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.**

---

[105] Supra at note 93.

> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.[106]

...

Here, the FLD/FAN and FDDA were both served on Libao, a food handler deployed at petitioner's registered address responsible for preparing and ensuring the quality of its food products.[107] While petitioner does not dispute that Libao received the FLD/FAN and FDDA, it nevertheless argues that she is neither its clerk nor someone having charge of its premises. In other words, since she had no authority to receive the FLD/FAN, the same did not bind petitioner.[108]

The records yield clearly that, indeed, it was Libao who received the FLD/FAN. In the Acknowledgement Receipt thereof, Libao indicated that she was the taxpayer's "Staff".[109] The same is true with the FDDA's Acknowledgement Receipt.[110] Further, it is not disputed the FLD/FAN and FDDA were served at petitioner's registered address at 13 Escanilla St., Concepcion, District I, Malabon City.

While petitioner may argue that Libao was not in-charge of its premises and should not have any business receiving the BIR's correspondence or documents, an extensive evaluation of the parties' documentary and testimonial evidence, would nevertheless reveal that petitioner's actions before and after its receipt of the said documents are not aligned with its posturing that Libao was not the proper recipient (and thus should not bind it).

---

106 Italics in the original text and emphasis supplied.

107 See Q&A No. 50, Judicial Affidavit (Denise Dianne David Tabije) subscribed on 23 September 2022, supra at note 41.

108 Petitioner's Memorandum, supra at note 77, pp. 510-516.

109 See Acknowledgment of Receipt dated 12 April 2021, Exhibit "R-7", supra at note 18.

110 See Acknowledgement of Receipt dated 12 November 2021, supra at note 25.

First, based on case records, the Court finds that the First LOA, the Checklist, and the First Notice were all received by food handlers. [111] However, it is noted that in a subsequent Letter dated 04 March 2020, petitioner, through Jacinto, its President, wrote respondent to request for additional period to submit the documents requested in the SDT. Glaringly, petitioner did not disavow the authority of its food handlers to accept documents on its behalf. It reads:[112]

> ...
> DELICIOUS KAKANIN ENTERPRISES CORPORATION
> No. 13 Escanilla St., Concepcion
> Malabon City
>
> The Chief
> Legal Division
> BIR Building, EDSA
> Caloocan City
> Sir:
>
> This is to acknowledge receipt of your letter on March 3, 2020.
>
> In connection therewith, may we request your good office to extend the date of submission for all the required necessary papers and documents to March 17, 2020 instead of March 4, 2020 for appearance.
>
> Thank you in anticipation of your favorable action regarding this request.
>
> Very truly yours,
>
> ELENITA JACINTO
> President
>
> March 4, 2020
> ...

Verily, the letter does not speak of any issue raised regarding the unauthorized receipt. It did not even advise the BIR that its food handlers are not authorized to receive any BIR communications. On the

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111 **See** LOA dated 24 September 2019 received by Erlyn Marcos, Exhibit "R-1", supra at note 9. **See also** Checklist of Requirements dated 25 September 2019 received by Erlyn Marcos, supra at note 10. **See further** First Notice for Presentation of Records received by Charie S. Libao on 28 October 2019, Exhibit "R-2", supra at note 11.

112 Supra at note 14.

contrary, it merely acknowledged receipt of the SDT. Tabije even testified that —

...

[PRESIDING] JUSTICE DEL ROSARIO:
Q: So, in Malabon there were food handlers. That is how I understand you. And do you say that service in Malabon is the correct address where service should be made?

MS. TABIJE:
A: Yes, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: Now, you are saying that only food handlers received the communications from the BIR. How many employees are there in that Malabon office?

MS. TABIJE:
A: The food handlers, sir, they were six (6), your Honor, at that time.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: There were six (6).

The directors or corporate officers, do they hold office in Malabon?

A: MS. TABIJE:
Yes, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: Do they hold office in Malabon?

MS. TABIJE:
A: Yes, your Honor, but at that time we were operating skeletal workforce so it was only limited time that, it was mostly online like one or twice a week that the officers come to Malabon.

[PRESIDING] JUSTICE DEL ROSARIO:
Yes.

Q: Now, do you say that the Letter of Authority was validly served in Malabon?

MS. TABIJE:
A: Letter of Authority, yes, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: Even if it was received by the food handler?

MS. TABIJE:
A: At that time, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: No. The question is simple.

The Letter of Authority was received by a food handler and then you never questioned the manner by which the Letter of Authority was served, right?

MS. TABIJE:
A: Yes, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: And the recipient of the Letter of Authority was a mere food handler, yes?

MS. TABIJE:
A: Yes, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: So, when a food handler now again receives the Preliminary Assessment Notice, the Formal Letter of Demand. Why would you say that these food handlers are no longer authorized when, in the first place, when the Letter of Authority was received by a food handler, there was no objection, no letter-complaint filed with the BIR saying that next time do not serve it to a food handler. You never did that, right?

MS. TABIJE:
A: The one who received the LOA, your Honor, was the team leader or in-charge.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: Yes. But he was simply a food handler according to your Judicial Affidavit, he was a food handler. Alright?

MS. TABIJE:
A: Yes, your Honor.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: So, when a food handler receives a document for and in behalf of the petitioner and insofar as the Letter of Authority is concerned, that is binding. But when a Preliminary Assessment Notice is received by the same or another food handler, that is no longer binding. Is that your theory?

MS. TABIJE:
A: No, Sir.

[PRESIDING] JUSTICE DEL ROSARIO:
Q: But that is the way you are making it appear before this Court. Now, if you said that the directors and the officers are not actually in the place where supposedly the address was registered with the BIR, how do you expect the BIR to serve notices to the petitioner? Are they going to look where the directors are[?][113]

...

Second, it was established that Erlyn Marcos, the food handler who received the First LOA was able to forward the same to petitioner's bookkeeper. Moreover, Libao, the food handler who received the FLD/FAN was also able to endorse the same such that petitioner, through its President, was able to file a Protest (Request for Reinvestigation) against the FLD/FAN. Tersely, petitioner acted on the matters received by the food handlers. Such conduct hardly supports its stance (of absence of authority) but contradicts the same instead.

Thus, petitioner's acts of **(a)** not advising the BIR that its food handlers were not authorized to receive any BIR communications; and **(b)** acting on BIR issuances which were received by its food handlers, effectively barred it from assailing the authority of its food handlers under the principle of estoppel *in pais* or equitable estoppel. As explained by the Supreme Court in *Factory Automation and Instrumentation Corp. v. Commissioner of Internal Revenue:*[114]

...

Petitioner does not deny that Irene Masula received the FAN and FLD sent *via* registered mail. Petitioner nonetheless argues that

[113] TSN dated 28 May 2024, pp. 32-35.
[114] G.R. No. 236789 (Notice), 27 March 2023; Citations omitted and emphasis supplied.

Irene Masula is not its authorized representative when it comes to receiving notices on its behalf, and that the principle of estoppel should not be applied herein.

Petitioner is mistaken. The principle of estoppel may be applied in this case.

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his or her own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon. It has been applied wherever and whenever special circumstances of a case so demand. This Court has applied the principle of estoppel on the part of the taxpayer in several tax cases.

Here, petitioner is estopped from claiming that it did not receive the FAN and FLD sent through registered mail because of Irene Masula's alleged lack of authority to receive the same. As the CTA *En Banc* observed, Irene Masula previously received the PAN addressed and sent to petitioner through registered mail. Petitioner was thereafter able to file a protest to the PAN on June 8, 2011.

Petitioner did not contest the authority of Irene Masula to receive the PAN. It cannot now claim that the same person is unauthorized to receive the FAN, when it acted on the PAN that Irene Masula previously received.

...

Here, petitioner simply denied receiving the FAN by stating that Irene Masula is not its authorized representative. However, as discussed, petitioner is estopped from claiming that Irene Masula is not its representative authorized to receive notices on its behalf.

...

Moreover, Tabije's attempt to reconcile why the food handler who received the First LOA was able to forward the same to the management while the food handlers who received the PAN, FLD/FAN and FDDA were allegedly not able to do so, fails to convince in light of her declarations —

...

ATTY. SORIANO:
Q: Yes. How are you aware that the company has received the Letter of Authority?

MS. TABIJE:
A: Well, the Letter of Authority was received by our food handler. She forwarded to the bookkeeper. And so, the bookkeeper went to the BIR to submit some documents, to comply.

ATTY. SORIANO:
Q: So, Ms. Witness, can you confirm with us in this court that the notices received by your employees, presumably, are received and forwarded to the management?

MS. TABIJE:
A: So, the first notice was the LOA, sir. It was notified to us and it was sent to the bookkeeper. However, sir, the PAN, the FLD, and the WDL weren't forwarded to us. **It was because at the time of the notification of the letters, it was the company was partially not operating in a normal manner because it was the pandemic at the time.**

ATTY. SORIANO:
Q: But, Ms. Witness. May I clarify, Ms. Witness? But the management of the corporation is aware of the tax case with the BIR?

MS. TABIJE:
A: The first letter, sir, it was forwarded. That's why we give it to the bookkeeper, sir. But then the two (2) letters, we weren't aware. **The food handlers that received the letters, they didn't inform us that they received the letters and because we were not operating in a normal operating schedules and hours 'cause the store was closed at that time. So, we were like doing skeletal workforce just to survive the pandemic**. And so, it is, we received the letters when it was already the levy and that's why we asked the food handlers were there any letter prior to this that was received and that's the time that they tried to look for the letters. [115]

...

[115] TSN dated 28 May 2024, p. 11; Emphasis supplied.

Incidentally, although Tabije attempted to attribute the supposed failure of the food handler to refer the assessment notices to petitioner due to the Covid-19 pandemic, she failed to explain why petitioner (despite such claim) was able to still act on the matter raised in the said BIR issuances. Particularly, had there really been an issue on the receipt of these issuances, it should not have then reach out to the BIR or it should have contested the manner (in its Protest to the FLD/FAN filed on 20 April 2021) they were served.

In sum, this Court finds that the FLD/FAN and the FDDA were validly served on petitioner. Therefore, the FDDA had become final and executory upon petitioner's failure to appeal within 30 days from its receipt thereof.

THE COLLECTION LETTER IS NOT THE COMMISSIONER OF INTERNAL REVENUE'S (CIR'S) FINAL DECISION THAT IS APPEALABLE TO THE COURT OF TAX APPEALS (CTA).

Arguing that the 30-day period to appeal to the CTA should be counted from its receipt of the Collection Letter, petitioner cites *South Entertainment Gallery, Inc. v. Commissioner of Internal Revenue,*[116] where this Court's Second Division allegedly held that the 30-day period to appeal to the CTA should be counted from the receipt of the Collection Letter.[117]

Indeed, jurisprudence is replete with cases wherein the 30-day period to appeal to the CTA was counted from a letter (not an FDDA) from the CIR. However, for it to be appealable to the CTA, the said letter should, by its tenor and the circumstances of its issuance, constitute the CIR's final decision on the contested assessment.

Therefore, in *Commissioner of Internal Revenue v. Isabela Cultural Corporation,*[118] the Supreme Court ruled that the *Final Notice Before Seizure* is tantamount to the CIR's decision that is appealable to the

116 CTA Case No. 8257, 09 July 2014.
117 See Petition for Review, supra at note 1.
118 G.R. No. 135210, 11 July 2001.

CTA. It held that a "final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals (CTA)."[119]

Similarly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[120] the Supreme Court held that the Collection Letter dated 09 July 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. It found that the "Collection Letter demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes."[121]

In sum, not all collection letters coming from the CIR are appealable to the CTA — it is only those that had the nature and tenor of a final decision on a disputed assessment. Such is not the case for petitioner.

To recall, petitioner received the FDDA on 12 November 2021 wherein it was found liable for deficiency taxes amounting to ₱3,190,043.55, inclusive of surcharges, interest, and compromise.[122] Respondent, having not received a response from petitioner, concluded that the assessment had become final and executory. Thus, on 29 April 2022, respondent issued the WDL authorizing the distraint and levy of petitioner's real and personal properties.[123] Moreover, respondent issued several WOGs addressed to different banks on 02 June 2022.[124]

Presumably because respondent was unable to find sufficient real and personal property to answer for the assessment, it also issued three (3) collection letters addressed, not to petitioner, but to its

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119 Id.
120 G.R. Nos. 201398-99 & 201418-19, 03 October 2018.
121 Id.
122 See Final Decision on Disputed Assessment dated 03 November 2021, supra at note 25.
123 See Warrant of Distraint and/or Levy (WDL) No. RR5-WDL-04-26-22-2965(026) dated 29 April 2022, Exhibit "R-13", supra at note 26.
124 See Warrants of Garnishment, Exhibit "R-15" to "R-15-22", supra at note 27.

incorporators, as follows: (1) Norma Castillo Peralta; (2) Tabije; and (3) Jacinto, Josefina David Sta. Ana, and Alfredo Sta. Ana.[125]

The three (3) letters are identical, and the one received by Tabije on 26 August 2022 (which was the one appealed to this Court and the subject of the instant petition) reads:[126]

...
MS. DENISE DIANNE DAVID TABIJE
DELICIOUS KAKANIN ENTERPRISES CORPORATION
#1 Congressional Avenue Ext., Bahay Toro
Quezon City

Ma'am:

DELICIOUS KAKANIN ENTERPRISE CORPORATION
TIN: 006-594-261-000
Assessment No.: 38863/FDDA
Date Issued: November 3, 2021

KIND OF TAX	TAX YEAR	BASIC	SURCHARGE	INTEREST	COMPROMISE PENALTY	TOTAL MOUNT DUE
IT	2018	1,099,394.66	-	341,203.91	40,000.00	1,480,598.57
VT	2018	902,397.33	-	303,798.86	30,000.00	1,236,196.19
WE	2018	186,164.47	46,541.12	63,591.74	20,000.00	316,297.32
DST	2018	86,135.96	21,533.99	29,281.51	20,000.00	156,951.46
Total		2,274,092.42	68,075.11	737,876.02	110,000.00	3,190,043.55

Please be informed that the above-mentioned Delinquent Account case has been assigned to Revenue Officer (RO) Atty. Roberto G. Damian Jr.

Verification from the records of the Securities and Exchange Commission (SEC) disclosed that you are one of the incorporators of the said corporation.

In this connection, we are informing you that the internal revenue tax liability/ies mentioned above remained unpaid/unsettled to date. However, if payment has been made, kindly provide us proof of such payment so we may proceed with the cancellation/closure of your liability. Our office is located at General Concepcion St. cor. EDSA, 4th Floor BIR New Building, Arrears Management Section - Collection Division, Barrio Calaanan, Caloocan City. Otherwise, this Office will be constrained to enforce appropriate action provided for by law to effect collection thereof, without further notice.

[125] See Collection Letters all dated 16 August 2022, supra at note 28.
[126] Supra at note 29; Emphasis in the original text.

Please give this matter your preferential attention.

Very truly yours,

ROBERTO R. TARON
Chief, Collection Division

...

A perusal of the wordings and tenor of the Collection Letter clearly shows that it did not resolve or decide any disputed assessment. This is so because respondent had long issued its decision on the petitioner's Protest (Request for Reinvestigation) to the FLD/FAN, in the form of the FDDA issued on 03 November 2021 and received by petitioner on 12 November 2021.[127] In fact, had petitioner followed *South Entertainment Gallery, Inc. v. Commissioner of Internal Revenue*[128] to its conclusion, it would not have cited the same in support of the timeliness of the instant petition.

In *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[129] the Supreme Court ruled that the 30-day period to appeal had long expired when the Collection Letter dated 25 March 2011 was issued. Instead, the WDL, based on its tenor and the circumstances of its issuance, served as the CIR's final decision on the protest that is appealable to the CTA. **The Supreme Court, thus, declared that the CTA should have dismissed the appeal on the ground of lack of jurisdiction.** The Supreme Court held:

> ...
>
> In this case, the Formal Letter of Demand and Final Assessment Notice dated April 2, 2008 was sent by registered mail to the respondent on April 10, 2008. Petitioner did not receive any response from respondent. Thus, petitioner sent a Preliminary Collection Letter dated June 10, 2008.
>
> The Preliminary Collection Letter had a tenor of finality. It made reference to the Formal Letter of Demand and Final Assessment Notice dated April 2, 2008 issued and sent to respondent for the

127 See Final Decision on Disputed Assessment dated 03 November 2021, supra at note 25.
128 Supra at note 116.
129 G.R. No. 225809, 17 March 2021; Citations omitted, italics and emphases in the original text and supplied.

collection of its internal revenue tax liabilities. Respondent was directed to pay the tax liabilities within 10 days from receipt, with a warning that should it fail to do so, petitioner will initiate collection through administrative summary remedies without further notice.

In its June 19, 2008 letter-reply to the Preliminary Collection Letter, respondent stated that it had already paid the withholding tax deficiency and raised its exemption from income tax and VAT deficiencies as PAGCOR licensees. While it essentially assailed the correctness of the deficiency assessments, it *did not raise its non-receipt of the Formal Letter of Demand and Final Assessment Notice.*

In the absence of a timely protest from respondent, it was then reasonable for petitioner to presume that the Formal Letter of Demand and Final Assessment Notice had become final, executory, and demandable. Respondent's protest in its June 19, 2008 letter was belatedly raised. On June 22, 2010, a Warrant of Distraint and Levy was issued and served against respondent.

The Warrant of Distraint and Levy on June 22, 2010 constitutes a constructive denial or rejection of respondent's claim in its June 19, 2008 letter. It is petitioner's final decision on respondent's belated protest that is appealable to the Court of Tax Appeals. Respondent should have filed its appeal to the Court of Tax Appeals within 30 days from June 22, 2010, or on July 22, 2010, but it failed to do so. Instead, respondent filed a request for withdrawal and cancellation of the Warrant of Distraint and Levy on **September 29, 2010**, or **99 days** from receipt of the Warrant

...

In this case, respondent's request for withdrawal and cancellation of the Warrant of Distraint and Levy was filed on September 29, 2010, or only after **99 days** from receipt of the Warrant. Petitioner does not deny receipt of respondent's reply letter (containing its protest) to the preliminary collection letter. Finally, there was no such categorical statement in the letter-response dated February 3, 2011 of the Bureau of Internal Revenue Regional Director Romulo L. Aguila, Jr.

Parenthetically, the 30-day period to appeal had long lapsed when respondent filed its petition for review on March 31, 2011. Respondent's belated request for cancellation and withdrawal of the Warrant did not serve to extend the thirty [(30)]-day period to appeal. "A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, is a mere statutory right that may be waived or lost, as in this case." Considering that the petition for review was filed way beyond the 30-day prescriptive period, the Court of Tax Appeals should have dismissed the appeal on the ground of lack of jurisdiction.

...

Thus, petitioner was too late when it decided to act on the assessment at the Collection Letter stage. This is especially true since petitioner could have also appealed the WDL and the WOGs, as the validity of their issuance is among the "other matters" within the jurisdiction of the CTA under Section 7(a)(1) of RA No. 1125,[130] as amended by RA 9282.[131] The provision reads:

...

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

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

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue[.][132]

...

In this connection, the Supreme Court held in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[133] that:

...

The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments 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** and to rule if the Waiver of Statute of Limitations was validly effected.

...

130 Supra at note 88.
131 Supra at note 89.
132 Italics in the original text and emphasis supplied.
133 G.R. No. 162852, 16 December 2004; Emphasis supplied.

Finally, as previously mentioned, We are not unaware that during the proceedings, this Court denied respondent's Motion to Dismiss grounded on lack of jurisdiction. However, such denial is interlocutory and preliminary in nature. As stated in the Court's Resolution:[134]

> ...
>
> Jurisdiction is not to be determined by any plea or theory set up by respondents in their Motion to Dismiss. **Respondents' contention that petitioner had received the FDDA but nevertheless failed to appeal the same within the prescribed period is a matter of evidence that should be presented in a full-blown trial that requires the presentation of such document and its authentication.** Merely attaching a copy of said document in the Answer does not dispense of such requirement.[135]
>
> ...

As provided under Rule 135, Section 5(g)[136] of the Rules of Court, as amended, every court shall have the power to "amend and control its processes so as to make them conformable to law and justice". Thus, it is within this Court's power to modify its initial and preliminary finding that it has jurisdiction over the case.

In conclusion, We declare that the instant petition was filed out of time, consequently, this Court did not acquire jurisdiction over the case. It is a well-settled doctrine that the timely perfection of an appeal is a mandatory requirement.[137] It is worth emphasizing that an appeal is neither a natural nor a constitutional right, but is merely statutory. The implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered. Neither is the right to appeal a component of due process. It is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[138]

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134 See Resolution dated 26 May 2023, supra at note 35, p. 219.

135 Emphasis supplied.

136 SEC. 5. Inherent powers of courts. — Every court shall have power:

...

(g) To amend and control its process and orders so as to make them conformable to law and justice[.]

137 *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 172458, 14 December 2011.

138 *Duty Free Philippines v. Bureau of Internal Revenue*, G.R. No. 197228, 08 October 2014, citing *Spouses Elbe Lebin and Erlinda Lebin v. Vilma S. Mirasol, et al.*, G.R. No. 164255, 07 September 2011 and *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased) substituted by Reynaldo P. Villareal, Jr., et al.*, G.R. No. 181182, 10 April 2013.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Delicious Kakanin Enterprises Corporation on 27 September 2022 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice