CTA Form No. 8 (For DCC)

21-000400-0064

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

**CTA CASE NO. 10646**

**TOASTERLEVER, INC.,**
Petitioner,

- versus -

**NOTICE OF RESOLUTION**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**To:**

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

**ATTY. ALBERT C. ARPON**
**ATTY. CARL FITRI A. HUSSIN**
**ATTY. AVELINO G. ALFELOR JR.**
Bureau of Internal Revenue-Revenue Region No. 8A
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

**CAYETANO SEBASTIAN ATA DADO & CRUZ LAW OFFICES**
12th Floor, NDC Building, 116 Tordesillas Street
Salcedo Village, Makati City

***GREETINGS:***

You are hereby notified by these presents that on **March 25, 2025,** Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 27, 2025.**

**Atty. Margarette Y. Guzman**
Executive Clerk of Court III

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**FIRST DIVISION**

**TOASTERLEVER, INC.,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 10646**

*Members*:

**DEL ROSARIO,** *P.J., Chairperson,*
**BACORRO-VILLENA**, *and*
**CUI-DAVID**, *JJ.*

Promulgated:

MAR 25 2025 ; 10:00 AM

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# RESOLUTION

***CUI-DAVID, J.:***

Before this Court is respondent's ***Motion for Reconsideration*** *(Motion)*, filed *via* accredited courier and electronic mail (e-mail) on October 17, 2024, with respondent's ***Comment/Opposition [RE: Motion for Reconsideration dated 17 October 2024]***, filed *via* accredited courier and e-mail on October 24, 2024.

Respondent seeks the reversal of the Court's *Decision* promulgated on September 23, 2024, which granted petitioner's *Amended Petition for Review*. The dispositive portion of the *Decision* reads:

> **WHEREFORE**, in light of the foregoing, the instant *Amended Petition for Review* is **GRANTED**.
>
> Accordingly, respondent's *Formal Letter of Demand with Assessment Notices*, all dated October 12, 2020, assessing petitioner for deficiency taxes for taxable year 2017 in the total amount of **₱8,070,828.51**, inclusive of interest, and the *Warrant of Distraint and/or Levy* dated June 30, 2021, are **CANCELLED** and **SET ASIDE**.

> Further, respondent is **ENJOINED** and **PROHIBITED** from proceeding with the collection of taxes in the above-captioned case.
>
> **SO ORDERED**.

In his *Motion*, respondent contends that he was able to establish that the individuals who received the Bureau of Internal Revenue (**BIR**) notices were registered employees of petitioner. He further argues that petitioner's protests were invalid, and, as such, the BIR was justified in disregarding them without violating due process.

Petitioner, on the other hand, maintains that the improper service of the Notice of Informal Conference (**NIC**), Preliminary Assessment Notice (**PAN**), and the Final Assessment Notice and Formal Letter of Demand (**FLD**) violated its right to due process.

After due consideration, the Court resolves to **DISMISS** respondent's *Motion*.

Firstly, records reveal that respondent, through the Office of the Solicitor General (**OSG**), received the *Notice of Decision* on **September 30, 2024**, while the BIR received it on October 2, 2024.

Section 11 of Republic Act (**RA**) No. 1125,[1] as amended by RA No. 9282,[2] provides:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — ...
>
> "All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA **within fifteen (15) days from notice thereof**: Provide, however, That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.
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> ... ... ... [Emphasis supplied]

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[1] AN ACT CREATING THE COURT OF TAX APPEALS.

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

Accordingly, respondent had 15 days from September 30, 2024, or until **October 15, 2024**, to file a *Motion for Reconsideration.* However, respondent filed the *Motion for Reconsideration* only on October 17, 2024, **two days** beyond the deadline.

The Court emphasizes that the proper basis for computing the reglementary period to file an appeal and in determining whether a decision has attained finality is service on the OSG, not to the BIR. The lawyer deputized by the OSG is considered a mere representative of the latter, who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.[3]

Given the late filing of respondent's *Motion*, the assailed *Decision* dated September 23, 2024, has become final, executory, and unappealable, thereby depriving this Court of jurisdiction to entertain the *Motion.*

Even assuming arguendo that the Motion was timely filed, it would still fail on the merits.

The violation of due process committed by respondent has been thoroughly addressed in the assailed *Decision.*

It is evident that the notices were received by individuals who were not authorized by petitioner to receive communications. Specifically, the undated NIC was received by **Mr. Carlo Manaois**, a dining server at petitioner's restaurant;[4] the PAN was received by **Mr. Curt Bartolome**, who was not an employee of petitioner;[5] and the FAN/FLD was received by **Mr. Rodolfo Fonte**, a former dining assistant at The Flying Pan.[6]

The Court underscores that being an employee of a taxpayer does not, in itself, confer authority to receive BIR notices, contrary to what respondent seems to suggest. BIR

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3 *Baldovino-Torres v. Torres*, G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division], citing *National Power Corp. v. National Labor Relations Commission,* G.R. Nos. 90933-61, May 29, 1997 [Per J. Romero, Second Division].

4 Amended Petition for Review, par. 3.3 and 3.3.1, admitted by respondent in his *Answer*, pars. 4 and 7; Exhibit "P-17", Docket – Vol. IV, p. 1750.

5 Amended Petition for Review, par. 3.4.1, admitted by respondent in his *Answer*, par. 4; Exhibit "P-11-a", Docket – Vol. IV, p. 1687.

6 Amended Petition for Review, par. 3.12, admitted by respondent in his *Answer*, par. 15; Exhibit "P-12-a", Docket – Vol. IV, p. 1696.

issuances[7] mandate strict compliance with service procedures to ensure that notices are received by individuals duly authorized to act on behalf of the taxpayer, thereby safeguarding the taxpayer's right to due process.

Moreover, Mr. Bartolome, who received the PAN, is not even considered an employee of petitioner.

Thus, the Court reaffirms its ruling that respondent's failure to strictly comply with the requirements laid down by law and the BIR rules constitutes a denial of the taxpayer's right to due process.[8] The improper service of the NIC, PAN, and FAN/FLD violated petitioner's right to be properly informed and heard and rendered the deficiency tax assessment null and void.

**WHEREFORE**, in light of the foregoing, respondent's *Motion for Reconsideration* is hereby **DENIED** for being filed out of time.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ON OFFICIAL BUSINESS**
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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7 Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR 18-13.

8 *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].