REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

THE GREENBELT MADISON CONDOMINIUM ASSOCIATION, INC., *Petitioner,*	**CTA CASE NO. 10789**
	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: 4:10 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review,[1] posted on January 13, 2022, and received by the Court on February 28, 2022, pursuant to *Section 7 (1) of Republic Act ("RA") No. 1125,*[2] *as amended by RA No. 9282,*[3] to appeal respondent's issuance of the Warrant of Distraint and/or Levy ("WDL")[4] dated December 1, 2021, with reference number RR8A-WDL-2021-10-411, against petitioner, indicating total tax liability due from petitioner in the total amount of ₱3,203,557.51.

Petitioner prays herein that this Court (i) issue an order to temporarily restrain respondent from enforcing and implementing the subject WDL; (ii) issue a writ of preliminary injunction with identical terms as that of a temporary restraining order; and (iii) issue a judgment to withdraw and cancel the (a) Final Decision on Disputed Assessment ("FDDA"),[5] dated June 8,

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1 Docket Vol. 1, pp. 6-352, with annexes.
2 An Act Creating the Court of Tax Appeals, June 16, 1954.
3 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; March 30, 2004.
4 Exhibit "P-2", Warrant of Distraint And/Or Levy dated December 1, 2021, Docket Vol. 2, p. 740.
5 Exhibit "P-4", Final Decision on Disputed Assessment, dated June 8, 2020, *id.* at 759-761.

2020 and with reference number FDDA-087-RR8A-RDO47-2014-eLA No. 201200036057-A.N. 1515; and (b) the above-mentioned WDL.

The Parties

Petitioner The Greenbelt Madison Condominium Association, Inc. ("petitioner") is a condominium corporation duly incorporated and existing under the laws of the Republic of the Philippines, with principal office address at The Greenbelt Madison, 176 Salcedo Street, Legaspi Village, Makati City. It is duly registered.[6]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), who holds office at 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City. He is represented by the Legal Division of Revenue Region No. 8A located at 36th Floor, Exportbank Plaza Building, Chino Roces Avenue corner Sen. Gil Puyat Avenue, Makati City.[7]

The Facts

On January 26, 2016 respondent issued Letter of Authority No. AUDR03/005874/2016[8] authorizing Revenue Officer Marbert Miralles and Group Supervisor Ferdinand Apalisoc of Revenue District Office ("RDO") No. 047 – East Makati to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the taxable year ("TY") 2014.

Pursuant to such LOA, respondent issued on November 8, 2017, a Preliminary Assessment Notice ("PAN") with details of discrepancy[9], which was received by petitioner on November 16, 2017. Petitioner submitted the reply to the PAN[10] on November 30, 2017 which was received by respondent on December 1, 2017.

Thereafter, on December 21, 2017, petitioner received a copy of the Final Assessment Notice ("FAN")[11] with details of discrepancies, dated December 12, 2017, assessing petitioner for alleged deficiency income tax and expanded withholding tax ("EWT"). The assessed taxes are summarized as follows:

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6 See par. 1, Joint Stipulation of Facts and Issues ("JSFI"), Docket Vol. 2, p. 645.
7 See pars. 2 and 3, JSFI, *id.* at 645-646.
8 Exhibit "R-1", Letter of Authority, dated January 26, 2016, BIR Records, p. 3.
9 Exhibit "P-5", Preliminary Assessment Notice, dated November 8, 2017, Docket Vol. 2, pp. 762-764.
10 Exhibit "P-6", Reply to PAN, dated November 30, 2017, *id.* at 765-770.
11 Exhibit "P-7", Formal Assessment Notice, dated December 12, 2017, *id.* at 192.

Tax Type	Basic	Interest	Total
Deficiency Income Tax	₱ 1,760,225.34	₱ 959,684.5	₱ 2,719,909.84
Expanded Withholding Tax	433,198.00	257,545.11	690,743.11
TOTAL	₱ 2,193,423.34	₱ 1,217,229.61	₱ 3,410,652.95

To dispute the foregoing assessments, petitioner filed a protest letter[12] in response to the FAN, addressed to Regional Director Glen Geraldino, on January 17, 2018. Petitioner subsequently sent on March 16, 2018, a letter[13] with attached supporting documents to support the protest.

On June 9, 2020, petitioner then received the Final Decision on Disputed Assessment ("FDDA)[14] dated June 8, 2020 and signed by Regional Director Maridur Rosario. The FDDA essentially reiterated the assessments in the FLD subject to certain adjustments. The adjusted assessed taxes are as follows:

Tax Type	Basic	Interest	Total
Deficiency Income Tax	₱ 1,614,285.44	₱ 1,392,089.00	₱ 3,006,374.44
Expanded Withholding Tax	103,146.96	94,036.11	197,183.07
TOTAL	₱ 1,717,432.40	₱ 1,486,125.11	₱ 3,203,557.51

On July 8, 2020, petitioner filed a Request for Reconsideration of the FDDA[15], addressed to respondent CIR.

On December 1, 2021, petitioner received the subject WDL[16] issued on even date, indicating the alleged tax liability of petitioner for same amount indicated in the FDDA – ₱3,203,557.51.

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[12] Exhibit "P-8", Protest Letter to Final Assessment Notice and Formal Letter of Demand, dated January 17, 2019, *id.* at 774-782.
[13] Exhibit "P-9", Letter , dated March 16, 2018, *id.* at 783-784.
[14] *Supra* note 5.
[15] Exhibit "P-3", Request for Reconsideration of Final Decision on Disputed Assessment, dated July 8, 2020, *id.* at 741-758.
[16] *Supra* note 4.

On December 23, 2021, petitioner filed a letter[17] with respondent acknowledging receipt of the WDL but informing respondent that there has been no communication regarding action on the Request for Reconsideration on the FDDA, dated June 8, 2020. In the same letter, petitioner informed respondent that the latter's issuance of the WDL, without any other communication as to the Request for Reconsideration, would be considered a denial of the former and will therefore file a judicial appeal with this Court. Petitioner thus withdrew its Request for Reconsideration.

On January 13, 2022, petitioner filed the instant Petition for Review[18] with urgent motion for the issuance of a Temporary Restraining Order, Writ of Preliminary Injunction, and/or Order for Suspension of Collection of Tax.

On the other hand, respondent filed with the Court its Comment and Opposition (To Petitioner's Urgent Motion for the Issuance of a Temporary Restraining Order, Writ of Preliminary Injunction, and/or Order for Suspension of Collection of Tax),[19] on May 16, 2022.

In its Resolution,[20] dated June 9, 2022, the Court granted petitioner's urgent motion for the issuance of a Temporary Restraining Order, Writ of Preliminary Injunction, and/or Order for Suspension of Collection of Tax. Respondent was thus enjoined and prohibited from enforcing and implementing the WDL, dated December 1, 2021. In the same Resolution, petitioner was ordered to deposit a cash bond equal to the amount sought to be collected (₱3,203,557.51), or post a surety bond equal to one and a half of the amount sought to be collected (₱4,805,336.26).

Meanwhile, after having been granted twice[21] an extended time to respond to the instant Petition for Review, respondent posted his Answer[22] on June 9, 2022.

On July 1, 2022, petitioner filed a Motion to be Exempted from or for Reduction of Bond.[23] Accordingly, respondent posted his Comment/Opposition[24] thereto on August 17, 2022. This Court denied the exemption from or reduction of the bond in its Resolution,[25] dated September 15, 2022.

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17 Exhibit "P-10", Letter, dated December 23, 2021, *id.* at 785-786.
18 *Supra* note 1.
19 Comment and Opposition (To Petitioner's Urgent Motion for the Issuance of a Temporary Restraining Order, Writ of Preliminary Injunction, and/or Order for Suspension of Collection of Tax), Docket Vol. 1, pp. 375-380.
20 Resolution dated June 9, 2022, *id.* at 388-391.
21 See Resolutions dated June 9, 2022 and June 17, 2022, *id.* at 388-391,445.
22 Answer with Special and Affirmative Defenses, *id.* at 392-410.
23 Motion to be Exempted from or for Reduction of Bond dated July 1, 2022, Docket, Vol. 2, pp. 503-517, with annexes.
24 Comment/Opposition (To Petitioner's Motion to be Exempted from or for Reduction of Bond), *id.* at 522-527.
25 Resolution, dated September 13, 2022, *id.* at 595-597.

On September 8, 2022, both respondent and petitioner filed their Pre-Trial Briefs.[26] On September 12, 2022, petitioner filed a Motion to Admit Amended Pre-Trial Brief[27] along with its Amended Pre-Trial Brief.[28]

The Pre-Trial Conference was thereafter held on September 15, 2022[29] and the Joint Stipulation of Facts and Issues[30] ("JSFI") was submitted by the parties on October 10, 2022.

The Pre-Trial Order[31] was then promulgated by the Court on November 25, 2022.

On November 29, 2022,[32] petitioner presented Robert C. Fuentes as its witness who testified on direct examination by way of his Judicial Affidavit,[33] dated January 12, 2022.

Mr. Robert Fuentes testified, among others, that he is the property manager of petitioner.[34] As property manager, his responsibilities include the duty to safekeep and review corporate and financial documents, as well as notices from government agencies[35] including the BIR, and custodianship of records pertaining to these.[36] He testified that petitioner did not receive any communication from respondent regarding its Request for Reconsideration on the FDDA as it would have certainly formed part of the records of the office of the property manager and that instead, petitioner received the WDL dated December 1, 2021.[37] He explained that petitioner treated the WDL as respondent's decision for the Request for Reconsideration[38] and thereby sent its Letter dated December 23, 2021 to respondent indicating the withdrawal of the Request for Reconsideration.[39]

Mr. Robert Fuentes also testified that his responsibilities include the issuance of billings of account dues, assessments of unit owners/tenants.[40] Pursuant to this, Fuentes explained that the dues billed are used for the upkeep

26 Respondent's Pre-Trial Brief, dated September 7, 2022, *id.* at 530-537; Petitioner's Pre-Trial Brief, dated September 8, 2022, *id.* at 541-560.
27 Motion to Admit Amended Pre-Trial Brief, dated September 12, 2022, *id.* at 563-566.
28 Amended Pre-Trial Brief, dated September 12, 2022, *id.* at 568-592.
29 Order, dated September 15, 2022, *id.* at 602-603.
30 Joint Stipulation of Facts and Issues, dated October 10, 2022, *id.* at 645-659.
31 Pre-Trial Order dated November 25, 2022, *id.* at 683-693.
32 See Minutes of hearing, dated November 29, 2022, *id.* at 694.
33 Exhibit "P-76", Judicial Affidavit of Robert C. Fuentes, dated January 12, 2022, Docket, Vol. I, pp. 260-276.
34 *Id.* at 261.
35 *Id.*
36 *Id.* at 262.
37 *Id.* at 270.
38 *Id.* at 271.
39 *Id.*
40 *Id.* at 261.

and utility expenses of the common areas of the building,[41] and that all the unit owners benefit from the expenses for upkeep.[42]

As to the merits of the issuance of the provisional remedies petitioned, Fuentes testified that if the WDL were to be enforced, the funds of the association to pay for the employees of its service providers will be jeopardized leading to disastrous and irreparable injury such as labor law suits and stoppage of basic necessities.[43]

On even date, petitioner also presented as its witness John Mark Baldonado who also testified on direct examination by way of Judicial Affidavit,[44] dated September 14, 2022.

Mr. Baldonado testified, among others, that he is the Interim Assistant Manager from FOPM Finance Division - External Accounting Department,[45] and that petitioner is one of the properties managed by FOPM.[46] His primary duties include overseeing the work of the Senior Accountant's review of the financial transactions and reports of the petitioner association.[47] Corollary to his primary duties, Baldonado was aware of petitioner's tax practices, processes, and procedures.[48] The witness corroborated the testimony of Robert Fuentes.

Meanwhile, petitioner filed on September 29, 2022, a Motion for Reconsideration[49] on this Court's denial of the Motion to be Exempted from or for Reduction of Bond. After considering respondent's Comment and Opposition[50] filed on January 27, 2023, the Motion for Reconsideration was denied on February 9, 2023.[51]

Undeterred, petitioner then filed a Second Motion for Reconsideration,[52] dated March 1, 2023, with attached Judicial Affidavits[53] of witnesses Fuentes and Baldonado to support petitioner's claim of its inability to post the required bond and the jeopardization of its interest as a taxpayer should the Court deny its Motion.

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41 *Id.* at 273.
42 *Id.* at 274.
43 *Id.*
44 Exhibit "P-77", Judicial Affidavit of John Mark Baldonado, dated September 14, 2022, Docket Vol. 2, pp. 604-629.
45 *Id.* at 605.
46 *Id.*
47 *Id.* at 606.
48 *Id.*
49 Motion for Reconsideration, dated September 27, 2022, *id.* at 631-641
50 Comment and Opposition (To Petitioner's Motion for Reconsideration dated September 27, 2022), *id.* at 713-716.
51 See Resolution, dated February 9, 2023, *id.* at 947-949.
52 Second Motion for Reconsideration, dated March 1, 2023, Docket Vol. 3, pp. 956-969.
53 See Judicial Affidavit of Robert C. Fuentes and Judicial Affidavit of John Mark Baldonado, both dated March 1, 2023 , *id.* at 970-977, 981-986.

In a Resolution[54] dated July 3, 2023, the Court denied the Second Motion for Consideration warning petitioner that it was the last time that this Court would address its request for the reduction of or exemption from bond requirements. Pursuant to the aforementioned denial, and upon noting that petitioner failed to submit the required cash bond or post surety bond, the Court, on July 12, 2023, lifted and set aside[55] the grant of Temporary Restraining Order, Writ of Preliminary Injunction, and/or Order for Suspension of Collection of Tax.

On February 7, 2023, petitioner filed its Formal Offer of Evidence ("FOE"),[56] against which respondent filed his comment and opposition[57] on February 22, 2023. The Court resolved petitioner's FOE in its Resolution[58] dated April 11, 2023 denying the admission of Exhibits "P-14", "P-15", "P-16", "P-17" , "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P- 28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-61", "P-62", "P-73", "P-74", and "P-75" for failure to identify, and admitting the rest.

Meanwhile, respondent was supposed to present his witness on July 20, 2023. However, upon motion by petitioner's counsel, the case was set[59] for referral to the Mediation Center on August 2, 2023.

The mediation conference was scheduled to be held on September 4, 2023.[60] However after two extension were granted,[61] the parties failed to reach an amicable settlement.[62]

The trial proceedings were therefore ordered to continue.[63] However, on January 29, 2024, petitioner filed a Manifestation with Motion to Reset.[64] Respondent filed his Comment[65] thereto on March 1, 2024 wherein he indicated that he did not interpose any objection as to the resetting of the hearing. On April 4, 2024, this Court resolved[66] the issue granting petitioner's Manifestation with Motion to Reset subject to the condition that in the event that respondent approves the Offer of Compromise, petitioner is given until

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54 Resolution, dated July 3, 2023, *id.* at 1083-1089.
55 Resolution, dated July 12, 2023, *id.* at 1091.
56 Formal Offer of Evidence (Petitioner), dated February 7, 2023, Docket Vol. 2, pp. 718-736.
57 Comment and Opposition (To Petitioner's Formal Offer of Evidence dated 07 February 2023, dated February 21, 2023, Docket Vol 3., pp. 950-952.
58 Resolution, dated April 11, 2023, *id.* at 999-1000.
59 See Order, dated July 20, 2023, *id.* at 1093.
60 See Mediation Schedule, dated August 30, 2023, *id.* at 1094-1095.
61 See Minute Resolution, dated October 12, 2023 *id.* at 1098; see also and Resolution, dated October 20, 2023, *id.* at 1107.
62 See Resolution, dated January 12, 2024, *id.* at 1111-1112.
63 *Id.*
64 Manifestation with Motion to Reset, dated January 29, 2024, *id.* at 1122-1225, with annexes.
65 Comment, dated February 26, 2024, *id.* at 1141.
66 See Resolution, dated April 4, 2024, *id.* at 1148-1149.

May 30, 2024 to submit the documents to support the same, but if no submission be made, the Court shall continue the initial presentation of evidence for respondent.

As no such documents to support the Offer of Compromise were submitted to the Court, respondent proceeded with the presentation of its witness, RO Marbet Mirales, on June 11, 2024.[67]

On July 1 2024, respondent filed his Formal Offer of Evidence.[68] This Court resolved the same in its Resolution[69] wherein the evidence offered was admitted.

On November 8, 2024, petitioner submitted its Memorandum.[70] Meanwhile, respondent filed his Memorandum[71] on November 11, 2024. After receipt of the memoranda, the instant Petition for Review was deemed submitted for decision.

The Issue

I. WHETHER THE COURT HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW;[72]

II. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX OF ₱3,006,374.44 AND EXPANDED WITHHOLDING TAX OF ₱197,183.07 FOR TAXABLE PERIOD JANUARY 1, 2014 TO DECEMBER 31, 2014 AS INDICATED IN THE FDDA DATED JUNE 8, 2020.[73]

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67 See Order, dated June 11, 2024, *id.* at 1152-1153.

68 Formal Offer of Evidence (For the Respondent), dated June 28, 2024, *id.* at 1154-1161.

69 Resolution, dated October 4, 2024, *id.* at 1182-1183.

70 Memorandum (For the Petitioner The Greenbelt Madison Condominium Association, Inc.), dated November 6, 2024, *id.* at 1185-2014.

71 Memorandum (For Respondent), dated November 14, 2024, *id.* at 1247-1263.

72 See Memorandum (For the Petitioner The Greenbelt Madison Condominium Association, Inc.), dated November 6, 2024, *id.* at 1188-1194; see also Memorandum (For Respondent), dated November 14, 2024, *id.* at 1250-1254.

73 See Pre-Trial Order, Docket Vol. 2, p. 685.

Arguments of the Parties

Petitioner's Arguments[74]

Foremost, petitioner highlights that the instant Petition for Review was timely filed, thus, properly conferred jurisdiction to this Court over the same. Invoking *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.,*[75] it emphasizes that the subject WDL constitutes a constructive denial of the Request for Reconsideration, hence, can be appealed to the Court within 30 days from receipt thereof. Assuming, however, that there is no constructive denial, petitioner insists that the subject WDL still falls under "other matters" well within the jurisdiction of the Court, pursuant to *Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282.*

With respect to the alleged undeclared income of ₱223,603.36, resulting in deficiency income tax assessment, petitioner argues that such assessment is erroneous since the "sales" reflected in the value-added tax ("VAT") returns also covers advance payments from members or unit owners.

Meanwhile, as regards the entirety of the deficiency income tax assessment totaling ₱3,006,374.44, inclusive of interest, petitioner insists the same as unmeritorious since, according to it, the Supreme Court has pronounced condominium corporations' association dues, membership fees, and other assessments/charges not subject to income tax.

Further, regarding the deficiency withholding tax totaling ₱197,183.07, inclusive of interest, petitioner advances that respondent erroneously retained the assessment pertaining to the administration fees which, according to petitioner, already forms part of the ₱7,824,290 relating to service contract payments. In addition, petitioner posits, the service contract payments include salaries of security guards which are not subject to withholding tax.

Finally, petitioner invokes *Section 203 of the National Internal Revenue Code ("Tax Code"), as amended,* and argues that the prescriptive period for assessing petitioner's EWT for the year 2014 has already prescribed.

Respondent's Counter-Arguments[76]

The CIR, on the other hand, argues that petitioner's appeal was filed out of time. He theorizes that by withdrawing the Request for Reconsideration filed with the CIR, petitioner is deemed to have accepted the denial of its

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74 See Memorandum (For the Petitioner The Greenbelt Madison Condominium Association, Inc.), dated November 6, 2024, *id.* at 791-818.

75 G.R. No. 225809, March 17, 2021.

76 See Memorandum (For Respondent), dated November 14, 2024, *id.* at 1250-1261.

protest and its tax assessment as reflected in the FDDA. Thus, according to respondent, the decision of the CIR's duly authorized representative becomes immediately final, executory and demandable as if no appeal, protest or request for reconsideration had ever been filed.

In the alternative, the CIR advances that assuming for the sake of discussion that the timely filing of petitioner's Request for Reconsideration is not affected by subsequent withdrawal of the same, the Court still lacks jurisdiction over the instant Petition for Review. Invoking *Section 3.1.4 of RR No. 18-2013*, respondent highlights that the CIR has 180 days from receipt of administrative appeal within which to decide. Afterwards, the taxpayer has two options: file an appeal within 30 days from the lapse of the period to decide or await for the decision of respondent. Here, the 180-day period expired on January 4, 2021, thus, giving petitioner until February 3, 2021 to file an appeal. Absent such appeal, according to respondent, petitioner had clearly chosen the second option (i.e., to wait for the decision of the CIR). For respondent, the Petition for Review is thus prematurely filed since no decision has been issued by respondent.

With respect to the merits, respondent insists that petitioner's claims on the assessment were unsupported. He highlights that petitioner failed to provide relevant supporting documents that would overthrow the findings in the FAN or convince the revenue officer otherwise. Further, claims that the assessment on petitioner's income tax and withholding tax have factual and legal bases.

In sum, respondent posits that the assessment was validly made and petitioner is liable to pay its deficiency income tax and EWT liabilities for taxable year 2014.

The Ruling of the Court

After a careful evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds the instant Petition for Review partially meritorious.

The Court has partial jurisdiction over the instant Petition for Review

Before delving into the merits of petitioner's refund claim, it is imperative for the Court to first determine whether jurisdiction over the subject matter has been properly conferred.

Section 228 of the Tax Code provides that if a protest or administrative appeal is denied, in whole or in part, by the Commissioner, the taxpayer adversely affected by the decision may appeal to the CTA within thirty days from the receipt of the adverse decision. The provision thus states:

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

To implement the foregoing, RR No. 18-2013 provides:

> 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 orreinvestigation defined as follows:
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> . . . .
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> 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.
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> . . . .
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> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable.

> A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
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> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.
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> . . . .

Here, the FAN[77] and FDDA[78] were issued by the CIR's authorized representative. The FDDA was thereafter administratively appealed to the CIR through a Request for Reconsideration.[79] Thus, in order that this Court may exercise its jurisdiction over the instant Petition for Review, the same must have been filed within the period provided by law which is within thirty (30) days from either the receipt of the decision denying the administrative appeal, or from the lapse of the 180-day period, counted from the date of filing the protest or the submission of the documents in support thereto.

However, instead of decision on the Request for Reconsideration, petitioner received the subject WDL on December 1, 2020.[80]

Petitioner now argues that the WDL issued against it constitutes a constructive denial of its Request for Reconsideration, giving it 30 days from receipt of the WDL to elevate an appeal with this Court.[81]

Respondent, on the other hand, counters that this Court cannot exercise jurisdiction over the present petition for being filed out of time.[82] While not expressly postulated, respondent does not recognize that the WDL he issued was a constructive denial of petitioner's Request for Reconsideration. Accordingly, it is argued that because petitioner had withdrawn its Request for Reconsideration, the assessment has become final, demandable, and

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77 *Supra* note 11.
78 *Supra* note 5.
79 *Supra* note 15.
80 *Supra* note 4.
81 See Memorandum for the Petitioner, Docket Vol. 3, pp. 1188-1192.
82 See Memorandum for the Respondent, *id.* at 1250-1254.

executory as if petitioner had not filed any protest and is now precluded from disputing the correctness of the assessment.[83] In the alternative, respondent argues that supposing that the withdrawal of the protest did not affect the finality of the assessment, the present petition should be dismissed for being prematurely filed as the 180-day period provided by law to act upon the protest had, according to respondent, not yet lapsed.[84]

In the present case, the relevant dates and counting of periods are as follows:

	Action of Parties	**Relevant period or number of days**
December 21, 2017	Receipt of FAN[85] by petitioner	
January 17, 2018	Filing of protest against the FAN[86]	
March 16, 2018	Filing of documents to support the protest[87]	
September 12, 2018		End of the 180-day period from filing of the protest
June 8, 2020	Issuance of the FDDA[88] signed by RD Rosario	
July 8, 2020	Filing of Request for Reconsideration of the FDDA to the CIR[89]	

Foremost, the 180-day period within which the CIR or his duly authorized representative must act on the protest or administrative appeal is counted from the date of filing the protest or the filing of the required documents within 60 days from the date of filing the protest. If the protest is not acted by the CIR's duly authorized representative within such 180-day period, the taxpayer may either appeal to the CTA within 30 days from the expiration of said period or to await for the final decision of the CIR's duly authorized representative.

Based on summary above, the 180-day period lapsed on September 12, 2018. Instead of filing an appeal within 30 days therefrom, petitioner opted to wait for the decision of the CIR's authorized representative.

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83 *Id.*
84 *Id.*
85 *Supra* note 10.
86 *Supra* note 11.
87 *Supra* note 12.
88 *Supra* note 13.
89 *Supra* note 1.

Upon receipt of the FDDA, petitioner then opted to file an administrative appeal with the CIR. It must be noted, however, that no new or separate 180-day period is granted to the CIR upon filing of such administrative appeal from the decision of the latter's duly authorized representative. This has been clarified by the Supreme Court in the case of *Nueva Ecija II Elective Cooperative, Inc. Area II vs. Commissioner of Internal Revenue.*[90]

Consequently, upon filing the Request for Reconsideration with the CIR, petitioner was constrained to wait for decision of the CIR, consistent with the provisions of *RR No. 18-2013* above which categorically states that in case of inaction within the 180-day period, the options given to the taxpayer are mutually exclusive and that the resort to one bars the application of the other.

In this regard, We debunk respondent's alternative theory mentioned above regarding the alleged premature filing of the appeal to the Court due to the alleged non-expiration of the 180-day period for the CIR or his duly authorized representative to decide on the protest or administrative appeal. The 180-day has already expired long before the FDDA was issued and Request for Reconsideration was filed with the CIR.

Going back to the timeline, petitioner received a WDL on December 1, 2020, instead of a decision on the Request for Reconsideration. Considering that the receipt thereof prompted petitioner to file the instant Petition for Review on January 13, 2022, We find that this Court has only partial jurisdiction over this case.

The validity of a warrant of distraint and/or levy falls within the jurisdiction of this Court. *Section 7(1) of RA No. 1125* provides for the jurisdiction of that special court:

> SEC. 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue; (Emphasis supplied).

The case of Philippine Journalists, Inc. v. Commissioner of Internal Revenue (*Philippine Journalists case)*[91] explains how a warrant of distraint or levy falls within the phrase "*other matters arising under the National Internal*

[90] Nueva Ecija II Elective Cooperative, Inc. Area II vs. Commissioner of Internal Revenue, G.R. No. 258101 (Notice), April 19, 2022.

[91] G.R. No. 162852, December 16, 2004.

Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue" in the above cited provision. To wit:

> 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.

The issue, however, stems from our jurisdiction over decisions and inactions on disputed assessments. Here, petitioner treated the WDL as respondent's decision on its Request for Reconsideration. This follows the example of cases like *Commissioner of Internal Revenue v. Isabela Cultural Corporation*,[92] where the Supreme Court treated an issuance stemming from the BIR's collection efforts as the CIR's final decision on a disputed assessment.

However, *Light Rail Transit Authority v. Bureau of Internal Revenue*[93] ("*LRTA case*") observed that this practice was only appropriate before (1) *RA No. 1125* was amended to include the inactions of the CIR under this Court's jurisdiction; and (2) *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[94] and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[95] clarified that taxpayers can await the CIR's final decision, even well past the standard 180+30-day prescriptive period. In other words, issuances involved in the BIR's collection efforts *can no longer* be considered final decisions on disputed assessments.

LRTA's application here is straightforward. As the WDL cannot be considered respondent's decision on petitioner's Request for Reconsideration, petitioner's administrative protest is still pending, and there is *no* decision on disputed assessment from which it can raise a judicial appeal. We thus lack jurisdiction over the assessment and must dismiss the related prayer.

Meanwhile, it must be recalled that the WDL which, as discussed above, falls under "other matters" appealable to the Court, was received by petitioner on December 1, 2021. Thus, it had up to December 31, 2021, or 30 days from receipt of the WDL within which to question the validity of the same. However, pursuant to *CTA Circular No. 02-2021*[96] which extended the submission for filing to 7 days from January 4, 2022, and further extended by

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[92] G.R. No. 135210, July 11, 2001.
[93] G.R. No. 231238, June 20, 2022.
[94] G.R. No. 168496, April 24, 2007.
[95] G.R. No. 171251, March 5, 2012.
[96] Subject: Extension of the Deadlines for the Filing of Any and All Pleadings and Other Court Submissions with the Court of Tax Appeals in Light of Super Typhoon Odette, December 21, 2021.

Supreme Court Administrative Circular No. 01-2022[97] which allowed for submission up to February 1, 2022, petitioner duly filed the present petition on January 13, 2022.

In sum, this Court has jurisdiction over the WDL itself, as a decision on "other matters", but lacks jurisdiction over the FDDA. While this Court cannot entertain petitioner's protest against the assessment, pending a decision from respondent on the matter, We can treat the Petition as assailing the WDL, in the interest of substantial justice.

The subject WDL is void given the pendency of petitioner's Request for Reconsideration filed with the CIR

Jurisprudence instructs that the issuance of a WDL must be premised first and foremost on the existence of delinquent taxes which, in turn, requires a final determination of the taxpayer's actual tax liability.[98]

Here, the subject WDL clearly indicates that the same was issued pursuant to "delinquent taxes" amounting to ₱3,203,557.51.

However, applying the pronouncement of the Supreme Court in the *LRTA case*, the issuance of such WDL was based on incorrect premise considering the pendency of petitioner's appeal with the office of CIR. The High Court held that:

> ***Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances***: the Preliminary Collection Letter, the Final Notice Before Seizure, the ***Warrant of Distraint and/or Levy,*** the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. *Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue.* ***They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise.*** To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the ***Warrant of Distraint and/or Levy***, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration ***all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.***

[97] Subject: Extension of the Deadline for the Filing of Any and All Pleadings and Other Court Submissions Falling Due in the Month of January 2022 in All Courts, January 10, 2022.

[98] Commissioner of Internal Revenue v. Pacific Hub Corp., G.R. No. 252944, November 27, 2024.

Undeniably, the WDL emanated from a non-demandable assessment as it is uncontested that the CIR has yet to decide on petitioner's Request for Reconsideration. Thus, applying the LRTA case, the WDL must be declared void, and should have no force and effect.

Due process demands that tax collection be preceded by a demandable assessment. This entails that the taxpayer be given full opportunity to be informed of the factual and legal bases of the assessment, to protest and have its evidence considered, and to avail of the right to appeal in the manner and within the period prescribed by law, just like petitioner's right herein to file administrative protest with the CIR.

Without a demandable assessment resulting in delinquent taxes, the BIR cannot resort to summary collection remedies. Such act of tax collection is not only premature and without legal basis; it is also violative of the due process requirements under *Section 228 of the Tax Code* and pertinent regulations.

ACCORDINGLY, premises considered, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction, insofar as it prays for the cancellation of the assailed Final Decision on Disputed Assessment, dated June 8, 2020.

Further, the instant Petition for Review, insofar as it prays for the withdrawal and cancellation of the Warrant of Distraint and/or Levy, dated December 1, 2021, with reference number RR8A-WDL-2021-10-411, is hereby **GRANTED**.

For being void, the Warrant of Distraint and/or Levy, dated December 1, 2021, with reference number RR8A-WDL-2021-10-411, enforcing the collection of alleged delinquent taxes amounting to ₱3,203,557.51 is hereby **CANCELLED** and **SET ASIDE**.

Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting or taking further action on the subject alleged tax liabilities against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

On leave
CORAZON G. FERRER-FLORES
Associate Justice

A T T E S T A T I O N

I attest that the conclusion 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
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice