CTA Form No. 8

22-000073-0058

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10775

JAMES FAUSTO CORP.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor Santiago Avenue
Diliman, Quezon City

GALIAS & RIVERA LAW OFFICES
3/F, Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City 1605

GREETINGS:

You are hereby notified by these presents that on **January 16, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 16, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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FIRST DIVISION

JAMES FAUSTO CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10775

Members:

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

Promulgated:

JAN 16 2025 9:40AM

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DECISION

CUI-DAVID, J.:

Before the Court is the *Petition for Review*[1] filed by James Fausto Corp. on February 18, 2022, which seeks the following reliefs:

1. To declare the assessments against petitioner null and void for allegedly being issued in violation of the due process requirements under the law; and

2. To quash, cancel and/or lift the Warrant of Distraint and/or Levy (WDL) No. WDL-2021-RR4-AMS-000198, dated January 18, 2022.

THE PARTIES

Petitioner James Fausto Corp. is a corporation duly organized and existing under Philippine laws, with principal place of business at Waterfront Road, Central Business District, Subic Bay Freeport Zone.[2]

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[1] Docket, pp. 6–21.
[2] *Id.* at 389, Joint Stipulation of Facts and Issues (JSFI), par. 1.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed official responsible for the assessment and collection of all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines related to such taxes. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

On July 1, 2019, petitioner received Letter of Authority (LOA) No. eLA201600028938/LOA-019-2019-00000067, [4] dated June 14, 2019, authorizing Revenue Officer (RO) Jomar Pangan and Group Supervisor (GS) Abdullah Bandrang to examine its books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2018 to December 31, 2018. The LOA was accompanied by a *Checklist of Requirements* dated June 14, 2019, and the *First Notice* dated July 1, 2019.

On July 22, 2019 and July 31, 2019, petitioner submitted the requested accounting records and additional documents to the BIR.[5]

On November 21, 2019, petitioner received the *Notice of Informal Conference*[6] (NIC) of even date, requesting it to appear before Revenue District Office (RDO) No. 019 within fifteen (15) days to present its position on the BIR's findings. Instead of attending the informal conference, petitioner submitted a position paper on December 20, 2019.

On October 16, 2020,[7] respondent served the *Preliminary Assessment Notice*[8] (PAN) dated September 17, 2020, finding petitioner liable for deficiency income tax, value-added tax (VAT), fringe benefit tax (FBT), and penalties in the aggregate amount of ₱25,852,154.05.

Petitioner filed a *Reply*[9] dated November 4, 2020, on an even date.

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[3] *Id.*
[4] *Id.* at 451, Exhibit P-3.
[5] *Id.* at 33 34, Exhibits P-4 and P-4-A.
[6] *Id.* at 454–458, Exhibit P-5.
[7] BIR Records, p. 282.
[8] Docket, pp. 55–56, Exhibit P-7.
[9] BIR Records, pp. 289–290.

On February 23, 2021, respondent served the *Formal Letter of Demand*[10] (FLD) dated January 19, 2021, reiterating the alleged deficiency taxes.

Petitioner filed a request for reinvestigation on March 25, 2021.[11]

On August 19, 2021, petitioner received the *Final Decision on Disputed Assessment*[12] (FDDA) dated July 5, 2021, holding it liable for deficiency taxes, including interests and penalties, in the aggregate amount of ₱27,447,891.95.

On September 20, 2021, petitioner filed a *Motion for Reconsideration*[13] of the FDDA before the office of respondent.

Pending resolution of the *Motion for Reconsideration*, petitioner received the WDL[14] dated January 18, 2022, on January 21, 2022. This prompted filing the instant *Petition for Review* on February 18, 2022.

On May 2, 2022, respondent filed his Answer within the extension period granted.[15]

On July 7, 2022, petitioner and respondent submitted their respective *Pre-Trial Briefs.*[16] Subsequently, the Pre-Trial Conference was held on September 14, 2022.[17]

On October 14, 2022, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI),[18] which served as the basis for the issuance of the *Pre-Trial Order*[19] on January 5, 2023.

The trial proceeded.

On April 12, 2023, petitioner presented its lone witness, Mr. Francis H. Abilo III.[20] Thereafter, petitioner filed a *Formal Offer of Evidence* on April 27, 2023,[21] to which respondent

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[10] Docket, pp. 459–460, Exhibit P-9.
[11] *Id.* at 68–70, Exhibit P-10.
[12] *Id.* at 467–469, Exhibit P-11.
[13] *Id.* at 75–86, Exhibit P-12.
[14] *Id.* at 27, Exhibit P-2.
[15] *Id.* at 110–126.
[16] *Id.* at 132–140 and 141–145.
[17] *Id.* at 372 and 373-374.
[18] *Id.* at 389–394.
[19] *Id.* at 408–413.
[20] *Id.* at 438 and 439–440.
[21] *Id.* at 441–450.

submitted a *Comment (To: Petitioner's Formal Offer of Evidence)* on April 28, 2023. In a *Resolution* dated May 18, 2023, the Second Division partially admitted some of petitioner's exhibits while denying others.[22]

Due to the reorganization of the Court's Divisions under Administrative Circular No. 01-2023 dated May 23, 2023, the case was transferred to this Court on May 29, 2023.[23]

On August 23, 2023, respondent presented his lone witness, RO Jomar Pangan (Pangan).[24] Then, respondent filed a *Formal Offer of Evidence* on September 13, 2023,[25] to which petitioner filed *Comments/Objections (Re: Respondent's Formal Offer of Evidence dated 13 September 2023)* via accredited courier on September 25, 2023.[26] Respondent's exhibits were admitted in a *Resolution* dated December 1, 2023.[27]

On January 22, 2024, the case was deemed submitted for decision, following the filing of petitioner's *Memorandum*[28] on January 5, 2024, and respondent's *Memorandum*[29] on January 10, 2024.[30]

Hence, this Decision.

THE ISSUE

The lone issue for this Court's resolution is:[31]

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY TAXES, PLUS SURCHARGE, INTEREST, AND COMPROMISE, FOR TAXABLE YEAR (TY) 2018.

Petitioner's arguments:

At the outset, petitioner points out the inconsistency in the testimony of respondent's witness regarding the service of the LOA. According to the Judicial Affidavit of RO Pangan, the LOA

[22] *Id.* at 490–491.
[23] *Id.* at 492.
[24] *Id.* at 501–502.
[25] *Id.* at 504–508.
[26] *Id.* at 516–523.
[27] *Id.* at 528–529, Resolution dated December 1, 2023.
[28] *Id.* at 530–549.
[29] *Id.* at 552–568.
[30] *Id.* at unpaged, Minute Resolution dated January 22, 2024.
[31] *Id.* at 409, Pre-Trial Order, Stipulation of Issue.

was served to petitioner on July 1, 2019. However, in the copy of the LOA presented and formally offered by respondent, the date of receipt is indicated as "**6/17/19**". Petitioner contends that the date of receipt of notices from the BIR is crucial in determining the taxpayer's rights and remedies, as it marks the start of the prescriptive periods against the taxpayer. Therefore, BIR cannot simply "mislook" such critical dates, especially when statements are made under oath, and the supporting document speaks for itself.

Further, petitioner asserts that under Section 3.13 of Revenue Memorandum Order (RMO) No. 10-2013, [32] assessment notices must be served through personal service to the taxpayer at their registered or known address or wherever they may be found. Substituted service, as in civil and criminal cases, is resorted to only when personal service is not practicable. Further, RMO No. 40-2019,[33] states that if personal service is not possible, the assessment notice may be served by substituted service or mail.

Petitioner submits that, in this case, without showing impossibility of personal service, respondent allegedly issued the PAN to an individual whose authority to receive the notice was not shown and who, based on the evidence, is associated with a company whose registration respondent's agent was not even aware of. As such, petitioner argues that there was no valid service of the PAN.

Petitioner also claims that its right to due process was violated when respondent did not consider its Reply to the PAN when he issued the FLD. Petitioner cites the case of *Commissioner of Internal Revenue v. Unioil Corp.*, [34] which highlights the importance of affording due process to the taxpayer at all stages of the assessment process, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997,[35] as amended.

Petitioner further asserts that the deficiency income tax assessment, based on an alleged unaccounted source of cash, is without legal or factual basis. According to petitioner, this

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[32] SUBJECT: Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.
[33] SUBJECT: Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.
[34] G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].
[35] Tax Reform Act of 1997.

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mistaken premise has already been repeatedly struck down by the Court.

Petitioner contends that the alleged sales outside the Subic Bay Freeport Zone lack any factual basis. According to petitioner, it participated in expos at SMX Convention Center, SM Mall of Asia Complex, Pasay City, for about three (3) days, for advertising and marketing purposes. Participants in such expos are required to register with the RDO that has jurisdiction over the place of the expo, pursuant to Revenue Regulations (RR) No. 16-2003. Petitioner had to register with RDO 51 – Pasay City to participate in these expos. However, petitioner claims that no sales transactions were conducted during these expos, as evidenced by its Certificate of Registration (COR), which bears the notation "For exhibit purposes only."

Petitioner also submits that it was issued a Certificate of Registration and Tax Exemption (CRTE) as a locator within the Subic Bay Freeport Zone. This exempts petitioner from all local and national taxes, subject only to a final tax of five percent (5%) of its Gross Income Earned in lieu of other taxes.

Lastly, petitioner submits that there is no basis for the imposition of the FBT, or even if there is, the obligation has already been extinguished by payment.

Respondent's counter-arguments:

Respondent argues that the Court's power of judicial review over decisions of the CIR on disputed assessments is exclusive and appellate by nature. Since the CIR has rendered an FDDA, the Court's jurisdiction becomes strictly appellate. As such, the Court cannot rule on matters not substantiated at the administrative level and should only confine itself to the issues and documents raised in petitioner's protest to respondent's assessment.

Respondent further argues that the FDDA was properly served, contrary to petitioner's claim. Respondent contends that Ms. Marilou C. Quiong is an employee of petitioner, as evidenced by her employee identification card, which she presented when the FDDA was personally served at petitioner's registered address.

Assuming that the FDDA was improperly served, respondent submits that the assessment against petitioner remains valid. Citing the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* [36] respondent submits that even if the FDDA is declared void, it does not necessarily render the assessments stated in the FLD void as well.

Respondent also argues that the deficiency tax assessments issued against petitioner have legal and factual bases, making petitioner liable for the assessed deficiency taxes. According to respondent, an analysis of petitioner's purchases per books, pre-processed RELIEF[37] from Audit Information, Tax Exemption and Incentives Division (AITEID), and *Alphalist* of Payees (subject to Expanded Withholding Tax) disclosed undeclared purchases amounting to ₱17,515,445.43. Thus, the corresponding undeclared income of ₱7,869,258.09 using the gross profit ratio of 31% was subjected to income tax. Further, undeclared purchases of vehicles in the amount of ₱3,289,477.05 were found through pre-processed RELIEF from AITEID; hence, its equivalent unaccounted source of cash was also subjected to income tax. Moreover, the audit revealed that petitioner has a local branch located outside the economic zone, thus, violating the provisions of its CRTE, and rendering its total sales subject to regular income tax rate of 30%.

As to petitioner's claim for VAT exemption, respondent submits that petitioner violated the terms of its CRTE. Hence, petitioner was found liable for deficiency VAT.

Finally, respondent asserts that petitioner should not be allowed for the first time on appeal to attack the factual and legal bases of the deficiency fringe benefits tax assessment and imposition of compromise penalties.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

[36] G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

[37] RELIEF means Reconciliation of Listings for Enforcement.

The Court has jurisdiction over the instant case under "other matters" arising under the Tax Code or other laws administered by the BIR.

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction, authorized to hear and decide only those matters explicitly provided for by law. Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[38] as amended by RA No. 9282,[39] 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;
>
> 2. **Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (*Boldfacing supplied*)

Correspondingly, Section 3(a)(1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the Court in Division has jurisdiction over (1) the decisions or inaction of the CIR involving disputed assessments (*first category*); and (2) other matters arising under the NIRC of 1997, as amended (*second category*), among others.[40]

[38] An Act Creating the Court of Tax Appeals.

[39] 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.

[40] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:

For jurisdiction under the *first* category to arise, there must first be a disputed assessment.[41] Under Section 228 of the NIRC of 1997, as amended, a taxpayer must file a valid administrative protest against an assessment for it to be considered disputed.[42]

Section 3 of RR No. 12-99,[43] as amended, implements Section 228 of the NIRC of 1997, as amended, as it outlines the detailed procedures relative to the issuance and protest of deficiency tax assessments.

Sections 3.1.4 of RR No. 12-99, as amended, provides as follows:

> 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.
>
> xxx xxx xxx
>
> 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. (*Emphasis supplied*)

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(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;
(2) **Inaction by 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 ... (Boldfacing supplied)

41 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

42 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: Provided, however, That a preassessment notice shall not be required in the following cases:
xxx xxx xxx
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.

43 SUBJECT: 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.

Based on the foregoing, a taxpayer has thirty (30) days from receipt of the Final Assessment Notice (FAN) and the FLD to file a protest. If the protest is denied, in whole or in part, by the CIR's duly authorized representative, the taxpayer may either: (a) appeal to the CTA within thirty (30) days from the date of receipt of the said decision or (b) elevate the protest through a request for reconsideration to the CIR within thirty (30) days from date of receipt of the decision of the CIR's duly authorized representative.

Anent the *second* category, the term "other matters" has been interpreted to include issues such as the review of the CIR's authority and decision to compromise;[44] the prescription of the CIR's right to collect taxes;[45] and the determination of the validity of a WDL or a waiver of the statute of limitations.[46]

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue (PJI case)*, [47] the Supreme Court clarified what constitutes "other matters" over which the CTA has jurisdiction, 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.
>
> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. **In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue**.

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44 *Philippine National Oil Company v. Court of Appeals, et al.*, G.R. Nos. 109976 & 112800, April 26, 2005 [Per J. Chico-Nazario, *En Banc*].

45 *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, et al., G.R. No. 258947, March 29, 2022 [Per J. Caguioa, First Division]; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010 [Per J. Leonardo-De Castro, First Division].

46 *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021 [Per J. Hernando, Third Division]; *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division].

47 G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division].

In this case, petitioner received the FDDA signed by Regional Director Joseph M. Catapia, assessing it for deficiency income tax, VAT, FBT, and administrative fines and penalties for TY 2018. Since the FDDA was issued by the Commissioner's duly authorized representative, petitioner sought reconsideration before the CIR. However, while the appeal was pending, petitioner received the subject WDL enforcing the collection of the alleged deficiency tax assessments per FDDA. This prompted petitioner to file the instant *Petition for Review,* questioning the validity and correctness of the deficiency tax assessments and the WDL.

Petitioner assails the issuance of the WDL, and among the reliefs sought in its *Petition for Review* is for the Court to quash, cancel, and/or lift the WDL dated January 18, 2022. Consistent with the *PJI case*, the Court affirms its jurisdiction over "other matters" to address and determine the validity of the subject WDL.

Given that the *Petition for Review* was filed within the thirty (30)-day period from petitioner's receipt of the challenged WDL, the Court finds that it has jurisdiction to take cognizance of the instant case.

As a "court of record," the CTA is authorized to conduct trial de novo.

Before delving into the validity of the WDL, the Court shall first address respondent's assertion that since an FDDA has already been issued, the Court cannot rule on matters that were not substantiated at the administrative level. Citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, [48] respondent argues that the Court should confine its review to issues and documents raised in petitioner's protests to respondent's assessment.

The Court disagrees.

[48] G.R. No. 207112, December 8, 2015 [Per J. Mendoza, *En Banc*].

As a court of record, CTA cases are litigated *de novo,* and party litigants must prove every minute aspect of their case if they want the Court to take such evidence into consideration.[49]

The case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue,*[50] is instructive:

> The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:
>
>> Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

Accordingly, this Court is not limited to determining whether respondent's findings are consistent with the law based on the supporting documents submitted at the administrative level. Jurisprudence has settled that this Court can consider and evaluate *anew* evidence submitted before it and make its own factual determination.

The Court shall now proceed to determine the validity of the WDL.

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[49] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005 [Per J. Carpio-Morales, Third Division].

[50] G.R. Nos. 206079-80 & 206309, January 17, 2018 [Per J. Leonen, Third Division].

The WDL is void for violating petitioner's right to due process and for being issued prematurely.

While the issuance of WDLs typically occurs post-assessment and is not directly linked to tax assessments, the Court retains jurisdiction to determine the propriety of their issuance. This is because such issuance constitutes a decision by respondent on "other matters" arising from the implementation of the NIRC (*i.e.*, collection of taxes) that may be appealed before this Court under Section 7(1) of RA No. 1125, as amended.

Intrinsic to the Court's determination of the propriety of the WDL is its determination of the validity and finality of the assessment.

In the instant case, petitioner asserts that its right to due process was violated due to *improper service* of the PAN, and respondent's *failure to consider petitioner's arguments and explanations* in its Reply to the PAN when the FLD was issued.

Petitioner's claim is impressed with merit.

Section 3.1.6 of RR No. 12-99,[51] as amended by RR No. 18-2013,[52] specifies that the mode of service to the taxpayer should be by personal service, *i.e.*, that the notice be served on the party himself at his registered or known address or wherever he may be found. If personal service is not practicable, as in the case when the party is not present at the registered or known address, the notice shall be served by substituted service. In other words, substituted service may be resorted to if personal service is not practicable.

Section 3.1.6 of RR No. 12-99, as amended, provides as follows:

> 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:

[51] *Supra* note 43.
[52] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

(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.**

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.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested Witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

In the present case, respondent failed to establish that personal service was impracticable to justify the RO's resort to substituted service. The testimony of RO Pangan revealed that the person who received the PAN, Mr. Richard Alarcon, was not an employee of petitioner, to wit:

> Atty. Dayrit
> Q: Who received this Preliminary Assessment Notice, Mr. Witness?
>
> RO Pangan
> A: Richard Alarcon, the Area Manager of James Fausto Corporation.
>
> Atty. Dayrit
> Q: Is there any proof that the person you mentioned is an employee of James Fausto Corporation?
>
> RO Pangan
> A: There is an attachment of an ID in the docket. I always make sure that the notice on the letter is personally served to the registered address of the taxpayer.
>
> xxx xxx xxx
>
> Atty. Dayrit
> Q: May I see, Mr. Witness, the identification that you are referring to? Mr. Witness, in this identification that you are referring, it is written, Prime Pacific Grill. Is it not?
>
> RO Pangan
> A: Yes, Attorney.
>
> Atty. Dayrit
> Q: There is nothing in this document that mentions James Fausto Corporation. Correct?
>
> RO Pangan
> A: Yes, Attorney.[53]

As held by the Supreme Court, the persuasiveness of the right to due process reaches both substantial and procedural rights, and the failure of the CIR to *strictly* comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process.[54] Here, the service of the PAN was improper because the person who received it was

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[53] TSN, RO Jomar M. Pangan, August 23, 2023, p. 11–12.
[54] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].

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neither petitioner's "clerk" nor a "person having charge thereof," as required under Section 3.1.6 of RR No. 12-99, as amended. This failure to follow the prescribed service rules violated petitioner's right to due process.

Moreover, even if the PAN had been properly served, the assessment remains void due to respondent's failure to consider petitioner's explanations or arguments in its Reply to the PAN, which amounts to a failure to inform petitioner of the legal and factual bases of the assessment.

Section 228 of the NIRC of 1997, as amended, sets out the procedural safeguards to ensure a taxpayer's due process rights in tax assessments. The relevant portion of this provision states:

> "SEC. 228. *Protesting of Assessment.* — x x x
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void**.[55]
>
> xxx xxx xxx."

To implement the above, Section 3 of RR No. 12-99,[56] as amended by RR No. 18-2013,[57] provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* — **If after review and evaluation by the Commissioner or his duly authorized representative**, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX "A" hereof).

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[55] Boldfacing supplied.
[56] *Supra* note 43.
[57] *Supra* note 52.

> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void** (see illustration in ANNEX 'B' hereof). x x x. (*Bolfacing supplied*)

It is well to note that the Supreme Court has consistently nullified tax assessments issued in violation of the taxpayer's right to due process. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[58] (*Avon case*), the Supreme Court, through Justice Marvic M.V.F. Leonen, emphasized the critical importance of due process in issuing deficiency tax assessments. The Supreme Court noted:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, <u>but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process</u>**.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these**

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[58] G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

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submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

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The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure." **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.**

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In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, **weigh evidence, and draw conclusions from them** as basis for their official action and exercise of discretion in a judicial nature." **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

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In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character." It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings**:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

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(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

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The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage." **The decision-maker must consider the totality of the evidence presented as he or she decides the case.**

The last requirement relating to the form and substance of the decision is the decision-maker's "'duty to give reason' to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."

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"[A] fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

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In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc., but proceeded with the registration, recertification, and distribution of the questioned contraceptive drugs and devices. It ruled that petitioner was not afforded the genuine opportunity to be heard.

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the

> party be sufficiently informed of the reasons for its conclusions.
>
> xxx xxx xxx
>
> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
>
> xxx xxx xxx
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record**.
>
> Indeed, **the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason**. (*Citations omitted; emphasis supplied*)

The foregoing doctrinal pronouncement affirms that the issuance of a PAN is an essential part of due process. It provides both the taxpayer and the BIR an opportunity to settle issues at the earliest possible time, avoiding further assessment through the issuance of a FAN or reducing the assessment promptly. However, this purpose is not served if the BIR fails to consider the taxpayer's explanations or arguments before issuing the FAN. Such failure is a deplorable transgression of the taxpayer's right to due process. Moreover, the BIR's disregard of its own standards and procedures renders the deficiency tax assessment null and void.

Records reveal that on September 17, 2020, the BIR issued a PAN[59] holding petitioner liable for deficiency taxes for TY 2018, as follows:

Tax Type	Basic Tax	Surcharge and Interest	Total
Income Tax	₱3,297,337.84	₱599,483.12	₱3,896,820.96
Value-Added Tax	12,682,299.63	8,980,457.98	21,662,757.61
Fringe Benefit Tax	159,504.80	73,070.68	232,575.48
TOTAL	**₱16,139,142.27**	**₱9,653,011.78**	**₱25,792,154.05**

In its *Reply*[60] to the PAN, petitioner provided explanations, contesting the liability for each deficiency tax, *viz*:

> In response to the details of discrepancies:
>
> 1. The company has been assessed income tax of Php3,896,820.96 in the assumption that it is under the 30% Regular Corporate Income Tax (RCIT) because of a branch located outside SBMA, the branch in Pasay with TIN 216-111-005-004 with address at SMX Convention Center, SM Mall of Asia Complex, Pasay City was registered solely for the purpose of joining the Travel Expo held in SMX Convention center in Pasay City on February 13 to 15, 2014 where registration of a separate branch in RDO 510 – Pasay City was a requirement of the organizers of the event. The said travel expo lasted only for three days and no goods were sold or services rendered during the event. The purpose of joining the event was purely marketing and advertising purposes only and it is also indicated in the COR "For Exhibit Purposes Only". These activities do not constitute revenue generating activities and consequently, no revenue were generated outside the Subic Bay Freeport.
>
> 2. The company has also assessed for the Value added Tax of Php21,662,757.61, the company conducted all its operation within the Subic Bay Freeport Zone, and no VAT was collected from our customers.
>
> 3. The company is assessed undeclared income of Php25,384,703.52 due to differences noted from Third Party Information System of the BIR. We argue that there is no legal basis to the assessment of undeclared income from undeclared expenses which has been reiterated multiple times by the Court of Tax Appeals (CTA) on CTA EB Case no. January 4, 2017 8588 Mt. Blanc Motors vs CIR, CTA Case no. 08345 January 13, 2015 CIR vs Agrinurture, Inc., CTA EB Case no. 905,

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[59] Exhibit R-4, BIR Records, pp. 276–277.
[60] BIR Records, pp. 289–290.

CTA Case no. 7853, November 04, 2013 CIR vs Philippine Daily Inquirer.

The deficiency income tax on alleged additional taxable sales is bereft of factual and legal bases. Such income tax deficiency may not be assessed on the assumptions such as comparing schedule submitted by the company with third party information gathered from the Integrated Tax System. That the discrepancy between the list of purchases submitted by the company vis-a-vis third-party information has no basis in fact and in law and is based on mere inferences and assumption and is not supported by clear and convincing proof. Moreover, it contends that the imposition of deficiency income tax on the unaccounted source of cash is unsupported be clear and convincing evidence, considering that the assessment is the result of making a rudimentary comparison of figures in petitioner's financial statements.

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However, the FLD[61] dated January 19, 2021, still found petitioner liable for the same deficiency taxes, to wit:

Tax Type	Basic Tax	Surcharge and Interest	Total
Income Tax	₱3,297,337.84	₱727,401.76	₱4,024,739.60
Value-Added Tax	12,682,299.63	9,472,461.72	22,154,761.35
Fringe Benefit Tax	159,504.80	79,258.59	238,763.39
TOTAL	**₱16,139,142.27**	**₱10,279,122.07**	**₱26,418,264.34**

While the total assessed tax liabilities increased, a comparison of the amounts stated in the PAN dated September 17, 2020, and the FLD dated January 19, 2021, reveals that the basic tax amounts remained unchanged. The BIR merely adjusted the interests being imposed. Moreover, a perusal of the Details of Discrepancies[62] attached to the FLD shows that the BIR merely reiterated the findings in the PAN, without giving any reason for rejecting petitioner's explanations in its *Reply* to the PAN.

It bears emphasis that the taxpayer's right to respond to the PAN carries with it the correlative duty of the BIR to consider the response. The issuance of an FLD without considering the taxpayer's side is anathema to the cardinal principles of due process. The opportunity to be heard is a cornerstone of due process, and any failure to consider a taxpayer's protest renders the process meaningless.

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[61] Exhibit R-6, BIR Records, pp. 312–313.
[62] Exhibit R-6-A, BIR Records, pp. 310–311.

As part of the due process requirement in the issuance of tax assessments, respondent must give reasons for rejecting petitioner's explanations, and specify the particular facts on which his conclusions are based. These facts must appear in the record. In this case, respondent failed to observe this requirement in issuing the FLD. Thus, the inevitable conclusion is that respondent violated petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, and implemented by RR No. 12-99, as amended by RR No. 18-2013. As a consequence, the deficiency tax assessments are rendered void and unenforceable.

Additionally, if an assessment is based on third-party information (TPI), ROs are required to prepare and send a confirmation request to the TPI source or coordinate with the Revenue District Office having jurisdiction over the TPI source in the preparation and issuance of the confirmation request. If the TPI source agrees with the figures in the confirmation request, the RO must then obtain a sworn statement from the TPI source attesting to the veracity of the data provided. This is the mandate of RMO No. 46-04,[63] which reads:

> III. PROCEDURES
>
> xxx xxx xxx
>
> *Action on Protested LNs due to TPI discrepancy*
>
> The Revenue Officer assigned to handle the Letter Notice shall:
>
> xxx xxx xxx
>
> 2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.
>
> 3. Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.
>
>   3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

[63] SUBJECT: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

3.1.1 Prepare "Confirmation Requests" (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS

3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. Secure a sworn statement from the TPI source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

Relatedly, RMO No. 13-2012[64] states:

9. **Send a Confirmation Request from TPI sources** attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").

If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. However, if there

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[64] SUBJECT: Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.

> is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.... (*Boldfacing supplied*)

In *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*,[65] the Supreme Court ruled that unverified TPI cannot serve as a proper factual basis for a tax assessment. The Supreme Court ruled:

> ...Even assuming that [RMO No. 13-20 12] is applicable, the same likewise provides that the Confirmation Requests sent out to third parties by registered mail must be supported by registry return cards, which were not submitted as evidence in this case. Consequently, **the CTA *EB* was correct in not relying on the third-party information since unverified data cannot be considered as proper factual bases for the assessment against respondent**. In order to be valid, an assessment must be based on actual facts supported by credible evidence. Related thereto, the CTA *EB* was also correct in finding that petitioner failed to prove that respondent filed false or fraudulent returns. (*Boldfacing supplied*)

Clearly, an assessment must be based on verified facts and substantiated by evidence. Without the necessary confirmation or verification pursuant to RMO Nos. 46-04 and 13-2012 – such as confirmation requests and sworn statements from TPI sources - the data obtained from third-party matching remains unsubstantiated, rendering the assessment void for lack of factual and legal basis.

In the instant case, respondent alleges in his *Answer*[66] and *Memorandum*[67] that:

> ***Income Tax***
>
> Analysis of petitioner's purchases per books, pre-processed Relief from AITED and Alphalist of Payees (subject to Expanded Withholding Tax) disclosed **undeclared purchases amounting to P17,515,445.43**. Its corresponding underdeclared income amounting to P7,869,258.09 using the gross profit ratio of 31% was subjected to Income Tax.

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[65] G.R. No. 255382 (Notice), June 28, 2021 [Per Resolution, Second Division].
[66] Docket, p. 117.
[67] *Id.* at 560–561.

> **Undeclared purchase of vehicles in the amount of P3,289,477.05** were likewise found per pre-processed Relief from AITEID, hence, its equivalent unaccounted source of cash was subject to income tax.
>
> xxx xxx xxx
>
> ***Value-added Tax***
>
> xxx xxx xxx
>
> Likewise, as discussed above, petitioner was found to have **undeclared purchases amounting to P17,515,445.43**. Hence, the corresponding gross sales was assessed for deficiency VAT.
>
> Also, as discussed above, petitioner was found to have **undeclared purchase of motor vehicles**. Hence, the corresponding gross sales was also assessed for deficiency VAT. (*Emphasis supplied*)

Notably, a significant portion of petitioner's deficiency income tax and VAT assessments for TY 2018 stemmed from the BIR's data-matching with TPI.[68] However, a review of the records reveals that the TPI was not supported by any sworn statement or verification from the TPI source.

While the *Answer* indicates that respondent intended to present certain documents as evidence, including letter requests presumably related to the TPI, no such letter or confirmation requests to TPI sources, and no sworn statements from TPI in relation to the alleged undeclared purchases were formally offered as evidence. Consequently, the undeclared purchases amounting to ₱17,515,445.43 and the undeclared purchase of vehicles in the amount of ₱3,289,477.05 cannot serve as the factual basis for the underdeclared income of ₱7,869,258.09 and ₱3,154,589.72 (using the gross profit ratio of 31%), and undeclared sales of ₱25,384,703.52 and ₱3,389,477.05. Without confirmation or verification, TPI data is unsubstantiated, rendering the resulting tax assessments void for lack of factual and legal basis.

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68 Exhibit R-6, BIR Records, pp. 310–313.

Given the procedural lapses and violations of due process, the subject deficiency tax assessments are invalid and cannot support the issuance of the WDL, as void assessments bear no valid fruit.[69] Moreover, as the Supreme Court emphasized in *Light Rail Transit Authority v. Bureau of Internal Revenue,*[70] the issuance of a WDL while an appeal is pending before the CIR is premature. Thus, the WDL is void and without force or effect.

In light of these findings, further discussion of other issues raised by the parties is unnecessary.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand with Final Assessment Notices dated January 19, 2021, and the Warrant of Distraint and/or Levy No. WDL-2021-RR4-AMS-000198, dated January 18, 2022, are **CANCELLED** and **SET ASIDE**. The Final Decision on Disputed Assessment dated July 5, 2021, assessing petitioner for deficiency income tax, value-added tax, fringe benefits tax, and administrative fines and penalties for taxable year 2018, is **REVERSED** and **SET ASIDE**.

Furthermore, respondent is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject deficiency taxes against petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Separate Opinion)
ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[69] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 & 204119-20, July 9, 2018, [Per J. Leonardo-De Castro, First Division], citing *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per C. J. Panganiban, First Division].

[70] G.R. No. 231238, June 20, 2022 [Per J. Leonen, Second Division].

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JAMES FAUSTO CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10775

Members:

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

Promulgated:

JAN 16 2025 9:40AM

x---x

SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in granting the Petition for Review filed by James Fausto Corp., albeit on a different ground.

A perusal of the Petition for Review[1] reveals that petitioner was prompted to seek redress before the Court of Tax Appeals (CTA) after the Bureau of Internal Revenue (BIR), through Regional Director (RD) Joseph M. Catapia, issued the Warrant of Distraint and/or Levy (WDL) dated January 18, 2022,[2] *sans* any final decision by the Commissioner of Internal Revenue (CIR) on its Motion for Reconsideration[3] of the Final Decision on Disputed Assessment (FDDA).[4]

Considering that there is yet no final decision by the CIR on petitioner's Motion for Reconsideration that may be the subject of an appeal, it appears that resort to the CTA in accordance with Rule 42 of the Rules of Court in relation to Section 7(a)(1) of Republic Act (RA)

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[1] CTA Docket, pp. 6-21.
[2] Exhibit "P-2", CTA Docket, p. 27.
[3] Exhibit "P-12", CTA Docket, pp. 75-86.
[4] Exhibit "P-11", CTA Docket, pp. 467-469.

No. 1125, as amended by RA No. 9282, is procedurally rash and improper.

Nonetheless, by reason of the WDL issued against petitioner, an appropriate remedy must be available to assail its injurious effect.

To my mind, the correct remedy to assail the prematurely issued WDL is by way of a Petition for *Certiorari* under Rule 65 of the Rules of Court.

First, the WDL, which was issued prior to the issuance by the CIR of his final decision on petitioner's Motion for Reconsideration, is in the nature of an interlocutory order of the BIR which is a proper subject of a Petition for *Certiorari* under Rule 65 of the Rules of Court.

Second, based on the allegations in the Petition for Review, petitioner is questioning the act of the BIR in prematurely issuing the WDL while petitioner's Motion for Reconsideration of the FDDA is still pending with the CIR.

Third, petitioner has no other plain, speedy and adequate remedy in the ordinary course of law to assail the prematurely issued WDL. Petitioner is constrained to seek relief from the CTA against the BIR's collection attempt, specially since there was yet no final decision from the CIR upholding the assessments contained in the FDDA; and, there is nothing in the issuances of the BIR which provides for an adequate remedy that petitioner may avail to question a WDL issued during the pendency of an appeal or request for reconsideration before the CIR.

The next question is whether or not the CTA has basis to treat the Petition for Review filed under Rule 42 of the Rules of Court as Petition for *Certiorari* under Rule 65 of the Rules of Court.

The present Petition for Review may be treated as a Petition for *Certiorari*.

While an ordinary appeal or petition for review and a petition for *certiorari* are distinct legal remedies with different requirements and purposes, a petition for review may be treated as a petition for *certiorari* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *certiorari*.[5]

In *Golden Donuts, Inc. vs. Commissioner of Internal Revenue*,[6] instead of filing a petition for *certiorari* under Rule 65 of the Rules of Court before the CTA to question the interlocutory orders of the BIR, Golden Donuts, Inc. (GDI) filed a petition for review under Rule 42 of the Rules of Court. Nevertheless, the Supreme Court, in the interest of substantial justice and after noting that the petition was filed within the 60-day reglementary period to file a petition for *certiorari*, treated the petition for review filed before the CTA in Division as petition for *certiorari*. The Supreme Court remanded the case to the CTA in Division for resolution and for determination of whether there was grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR. The CTA was enjoined by the Supreme Court to treat the petition for review filed by GDI as petition for *certiorari*.

In the present case, records reveal that petitioner received the WDL on January 21, 2022. Petitioner filed the Petition for Review on February 18, 2022. Clearly, the petition was filed before the CTA within the 60-day period to file a petition for *certiorari*. Applying the ruling in *Golden Donuts, Inc.*, the CTA has jurisdiction over the Petition for Review (treated as a Petition for *Certiorari*).

With the Court's jurisdiction over the petition settled, the next step is to determine whether or not the WDL was issued by the BIR with grave abuse of discretion.

Considering that there is a pending appeal before the CIR, RD Catapia's action of issuing the assailed WDL was clearly beyond his authority to do. In issuing the assailed WDL, RD Catapia preempted the CIR's decision by considering his decision on the protest to the FLD as final and executory.

In *Light Rail Transit Authority vs. Bureau of Internal Revenue, et al.*,[7] the Supreme Court held that when the taxpayer files an appeal with the CIR requesting a reconsideration of the FDDA issued by the CIR's duly authorized representative, the taxpayer must await the CIR's "final decision" on the appeal and elevate it to the CTA within 30

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[5] *Elmer S. Miguel, et al., vs. Bureau of Internal Revenue*, CTA Case No. 10415, October 16, 2023; *Opal Portfolio Investments [FISTC-AMC (Asset Management Company)], Inc. Formerly Opal Portfolio Investments (SPV-AMC), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 11187, September 28, 2023.
[6] G.R. No. 252816, February 3, 2021.
[7] G.R. No. 231238, June 20, 2022.

days from receipt thereof. Following this pronouncement, petitioner has the right to await the CIR's action on its Motion for Reconsideration. The issuance of the assailed WDL not only deprives petitioner of this right, but it also denies the CIR the opportunity to make his own decision or to correct any errors of his subordinates.

Obviously, RD Catapia's issuance of the assailed WDL was done with grave abuse of discretion amounting to lack or excess of jurisdiction. Whatever semblance of authority RD Catapia had was arbitrarily wielded when he sought to supplant the CIR's right to make his own decision.

Thus, the issuance of the assailed WDL could not only be deemed as premature but also that RD Catapia had no authority to issue the same absent the CIR's decision on petitioner's Motion for Reconsideration.

All told, I am of the opinion that the present Petition for Review should be granted insofar as it prays for the cancellation or lifting of the assailed WDL, which was issued by the CIR's subordinate with grave abuse of discretion amounting to lack or excess of jurisdiction.

All told, I VOTE for the Court to: (i) grant the Petition for Review, (treated as a Petition for *Certiorari* under Rule 65 of the Rules of Court) filed on February 18, 2022, insofar as it prays for the cancellation or lifting of the assailed Warrant of Distraint and/or Levy dated January 18, 2022; (ii) annul and set aside the Warrant of Distraint and/or Levy dated January 18, 2022; and, (iii) order respondent Commissioner of Internal Revenue and his representatives to desist from enforcing any collection measures against petitioner.

ROMAN G. DEL ROSARIO
Presiding Justice