REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BSFIL TECHNOLOGIES, INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 10603

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

AUG 2 2025 2:00 p.m.

x - x

DECISION

FERRER-FLORES, J.:

The **Petition for Review** filed on September 22, 2021, prays that the assessments issued by respondent against petitioner on its alleged deficiency value-added tax (VAT) in the aggregate amount of **₱16,529,053.04** for the taxable period January 1, 2017 to June 30, 2017, be cancelled, withdrawn and declared void.[1]

THE PARTIES

Petitioner **BSFIL Technologies, Inc.** is a corporation duly organized and existing under Philippine laws with business address at 402 South Center Tower, 2206 Market Street, Madrigal Business Park, Alabang, Muntinlupa City.[2]

Respondent **Commissioner of Internal Revenue** (**CIR**) is the Chief Executive Officer of the Bureau of Internal Revenue (BIR), with office

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[1] Summary of the Case, Pre-Trial Order dated January 23, 2024, Docket – Vol. III, p. 1135.

[2] Par. 3, *Petition for Review with Urgent Motion to Lift Warrant of Distraint and/or Levy*, Docket – Vol. I, p, 18; and *Petitioner's Memorandum*, Docket – Vol. III, p. 1223.

address at BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 26, 2017,[4] petitioner received the Letter of Authority (LOA) No. SN: eLA201500047692 issued on September 19, 2017 by Regional Director Glen A. Geraldino (RD Geraldino) of Revenue Region No. 8 – Makati City, with attached Notice for the Presentation/Submission of Documents/Records dated September 25, 2017,[5] authorizing Revenue Officer (RO) Gerrico Chico and Group Supervisor (GS) Annabeth Gutierrez, to examine petitioner's books of accounts and other accounting records for VAT, for the period from January 1, 2017 to June 30, 2017.[6]

Subsequently, on April 30, 2019, RD Geraldino issued the second LOA No. LOA-V08-2019-00000276 (SN: eLA201600035823), which authorized RO Gerrico Chico and GS Alona Marie Alegre-Sison to examine petitioner's books of accounts and other accounting records for VAT, for the same taxable period from January 1, 2017 to June 30, 2017. This LOA was received by petitioner on May 6, 2019.[7]

On June 26, 2019, respondent issued a Notice for Informal Conference with Details of Discrepancies, which was received by petitioner on July 5, 2019.[8]

Thereafter, on September 17, 2019, respondent, through RD Geraldino, issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, finding petitioner liable for deficiency VAT in the total amount of ₱15,270,449.94, inclusive of interest. Petitioner received the PAN on September 30, 2019.[9]

On November 14, 2019, petitioner received LOA No. LOA-V8B-2019-00000457 (SN: eLA201600038500) issued by RD Geraldino on November 11, 2019, which authorized RO Carmina Luzano and GS Daniel

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[3] Par. 2, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1111.

[4] As indicated in Exhibit "R-1", Docket – Vol. III, p. 875.

[5] Exhibit "P-2", Docket – Vol. I, p. 348.

[6] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. III, pp. 1111 to 1112; Exhibit "P-1", Docket – Vol. I, p. 347; and Exhibit "R-1", Docket – Vol. III, p. 875.

[7] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112; Exhibit "P-3", Docket – Vol. I, p. 349; and Exhibit "R-2", Docket – Vol. III, p. 876.

[8] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112; Exhibits "P-4" and "P-4a", Docket – Vol. I, pp. 351 to 353; and Exhibits "R-4", "R-4-1" and "R-5", Docket – Vol. III, pp. 878 to 889.

[9] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112; Exhibits "P-5" and "P-5-a", Docket – Vol. I, pp. 354 to 360; and "R-7", "R-7-1", "R-8" and "R-8-1", Docket – Vol. III, pp. 894 to 900.

Mendizabel to examine petitioner's books of accounts and other accounting records for VAT, for the semester of taxable year 2017.[10]

On December 19, 2019, petitioner received the Formal Letter of Demand with attached Details of Discrepancies and Assessment Notice (FLD/FAN) dated December 17, 2019,[11] assessing petitioner of deficiency VAT, plus interest, in the aggregate amount of ₱15,746,723.80, for the period from January 1, 2017 to June 30, 2017. Petitioner filed its protest on January 9, 2020,[12] wherein it explained the alleged discrepancies as found in the said FLD/FAN.[13]

To allegedly clarify the true nature of its protest against the FAN/FLD, petitioner wrote the BIR the letter dated March 9, 2020, wherein it manifested that its protest letter should be treated as a "request for reinvestigation", instead of a "request for reconsideration".[14] However, despite petitioner's manifestation that the protest was "request for reinvestigation", it was still treated as a "request for reconsideration" by the BIR.[15]

On August 25, 2020, petitioner received the Amended Assessment Notice and Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancies dated August 20, 2020, assessing it for deficiency VAT, in the amount of ₱16,529,053.04, inclusive of interest.[16]

On September 24, 2020, petitioner elevated the protest directly with respondent through an administrative appeal/request for reconsideration, wherein it prayed for the cancellation and/or withdrawal of VAT assessment, attaching therewith certified true copies of the sales returns and cancelled invoices.[17]

Without having received respondent's ruling on its administrative appeal, petitioner was served the questioned Warrant of Distraint and/or Levy No. RR8B-WDL-21-06-16-00060 dated August 2, 2021 on even

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[10] Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112; and Exhibit "P-7", Docket – Vol. I, p. 367; and Exhibit "R-10", Docket – Vol. III, p. 911.
[11] Exhibits "P-8", "P-8-a" and "P-8-b", Docket – Vol. I, pp. 368 to 373; and Exhibits "R-11", "R-11-1"; "R-12" and "R-12-1", Docket – Vol. III, pp. 912 to 917.
[12] Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.
[13] Exhibit "P-9", Docket – Vol. I, pp. 374 to 379; and Exhibit "R-13", Docket – Vol. III, pp. 918 to 923.
[14] Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112; Exhibit "P-10", Docket – Vol. I, p. 380.
[15] Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1113.
[16] Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1113; Exhibits "P-11", "P-11-a" and "P-11-b", Docket – Vol. I, pp. 381 to 388; and Exhibits "R-16", "R-16-1", "R-17" and "R-17-1", Docket – Vol. III, pp. 930 to 937.
[17] Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1113; and Exhibit "P-12", Docket – Vol. II, pp. 439 to 455.

date,[18] for the collection of the said deficiency VAT amounting to ₱16,529,053.04.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed *via* electronic mail its *Petition for Review with Urgent Motion to Lift Warrant of Distraint and/or Levy* on September 2, 2021.[19] The said pleading was filed through courier on September 6, 2021.[20]

In the Order dated November 8, 2021,[21] the Court granted petitioner's *Urgent Motion to Lift Warrant of Distraint and/or Levy*, subject to the posting of an acceptable surety bond in an amount not more than double the amount of the alleged VAT deficiency assessment of ₱16,529,053.04. However, on February 22, 2022, petitioner filed its *Manifestation*,[22] stating that it does not have enough cash on hand to cover the amount of ₱33,058,106.00, and despite its readiness and willingness to post a surety bond before this Court, it is with deep regret that petitioner cannot do so since it will not be able to satisfy the cash deposit requirement imposed by surety companies. In the Resolution dated March 4, 2022,[23] the Court noted petitioner's *Manifestation*, and recalled and set aside the Order dated November 8, 2021.

On December 13, 2021, respondent filed his *Answer* through registered mail.[24]

On January 5, 2022, respondent transmitted the *BIR Records* for this case, consisting of 494 pages, in one folder.[25]

The Pre-Trial Conference was initially set on March 7, 2022,[26] and thereafter, on May 4, 2022.[27] During the supposed date of the Pre-Trial and in view of the Resolution dated May 11, 2022,[28] however, the parties were ordered to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation proceedings on June 1, 2022. On

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[18] Par. 13, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1113; Exhibit "P-13", Docket – Vol. II, p. 456; and Exhibit "R-20", Docket – Vol. III, p. 946.

[19] Considering that it was filed by email after 4:30 p.m. cut-off time on September 1, 2021, it was considered as filed on the next working day, September 2, 2021, pursuant to CTA *En Banc* Resolution No. 4-2021 dated February 24, 2021.

[20] Docket – Vol. I, pp. 7 to 14 and 17 to 52.

[21] Docket – Vol. III, pp. 959 to 960.

[22] Docket – Vol. III, pp. 953 to 955.

[23] Docket – Vol. III, pp. 1019 to 1023.

[24] Docket – Vol. III, pp. 830 to 864.

[25] *Compliance* dated January 5, 2022, Docket – Vol. III, pp. 949 to 952.

[26] Notice of Pre-Trial Conference dated January 3, 2022, Docket – Vol. III, pp. 961 to 962.

[27] Resolution dated March 14, 2022, Docket – Vol. III, p. 1025; and Minutes of hearing held on, and Order dated, May 4, 2022, Docket – Vol. III, pp, 1041 to 1042.

[28] Docket – Vol. III, p. 1045.

August 10, 2022, the Mediator, Retired Associate Justice Amelia R. Cotangco-Manalastas, filed a *Request for Extension*,[29] which was granted by the Court in its Resolution dated September 14, 2022.[30] Thereafter, on September 30, 2022, the parties filed their *Joint Motion to Suspend Proceeding Pending Compromise Agreement*,[31] which was granted by the Court in the Resolution dated October 12, 2022.[32] Considering that the parties failed to inform whether they have reached amicable settlement,[33] the Court issued the Resolution dated February 2, 2023,[34] ordering the PMC-CTA to return the case to the Court, and to transmit the *Mediator's Report* and other relevant documents. The *Mediator's Report* was then submitted on February 17, 2023,[35] stating that there was an "*Unsuccessful Mediation*".

Thus, the Pre-Trial Conference was finally set and held on September 19, 2023.[36] Prior thereto, respondent filed his *Pre-Trial Brief (With Attached Special Power of Attorney)* on February 28, 2022,[37] while *Petitioner's Pre-Trial Brief* was submitted on March 3, 2022.[38]

On October 18, 2023, the parties filed their *Joint Stipulation of Facts and Issues*,[39] which was admitted and approved by the Court in the Resolution dated November 13, 2023,[40] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 23, 2024 was then issued.[41] On January 29, 2024, petitioner filed its *Motion to Correct and/or Amend Pre-Trial Order with Manifestation*,[42] which was granted in the Resolution dated February 15, 2024.[43]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following witnesses: (1) Ms. Suzette L. Lasalan,[44] its Internal Audit Supervisor; (2) Ms. Richelda C.

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[29] Docket – Vol. III, p. 1049.
[30] Docket – Vol. III, pp. 1051 to 1052.
[31] Docket – Vol. III, pp. 1053 to 1055.
[32] Docket – Vol. III, pp. 1064 to 1065.
[33] Records Verification Report dated January 4, 2023 issued by this Court's Judicial Records Division, Docket – Vol. III, p. 1067.
[34] Docket – Vol. III, pp. 1069 to 1071.
[35] Docket – Vol. III, p. 1072.
[36] Notice of Resetting dated May 11, 2023, Docket – Vol. III, p. 1081; and Minutes of hearing held on, and Order dated, September 19, 2023, Docket – Vol. III, pp. 1083 to 1085.
[37] Docket – Vol. III, pp. 968 to 977.
[38] Docket – Vol. III, pp. 981 to 1017.
[39] Docket – Vol. III, pp. 1111 to 1129.
[40] Docket – Vol. III, p. 1132.
[41] Docket – Vol. III, pp. 1135 to 1143.
[42] Docket – Vol. III, pp. 1145 to 1148.
[43] Docket – Vol. III, p. 1152.
[44] Exhibit "P-16", Docket – Vol. I, pp. 334 to 346; and Minutes of hearing held on January 23, 2024, Docket – Vol. III, p. 1144.

Natanauan,[45] its Internal Audit Manager; and, (3) Mr. Restituto R. Adoremus,[46] its External Auditor.

On February 22, 2024, *Petitioner's Formal Offer of Evidence* was filed,[47] to which respondent filed, *via* accredited courier, its *Comment/Opposition (To Petitioner's Formal Offer of Exhibits dated 21 February 2024)* on February 28, 2024.[48] In the Resolution dated April 17, 2024,[49] the Court admitted all of the exhibits offered by petitioner, but noted that some of the exhibits are partly blurred or unreadable.

For his part, respondent presented the testimonies of the following BIR employees, namely: (1) RO Gerrico Chico;[50] (2) RO Carmina Luzano;[51] and, (3) RO Amerodin D. Hamdag.[52]

On May 8, 2024, respondent filed *via* accredited courier his *Formal Offer of Evidence*,[53] to which petitioner filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence)* on May 22, 2024.[54] In the Resolution dated July 5, 2024,[55] the Court admitted all of respondent's exhibits.

Respondent's *Memorandum* was filed *via* accredited courier on August 5, 2024,[56] while *Petitioner's Memorandum* was filed on August 14, 2024.[57]

The present case was considered submitted for decision on August 29, 2024.[58]

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[45] Exhibit "P-17", Docket – Vol. II, pp. 457 to 466; and Minutes of hearing held on January 23, 2024, Docket – Vol. III, p. 1144.
[46] Exhibit "P-18", Docket – Vol. II, pp. 714 to 725; and Minutes of hearing held on January 23, 2024, Docket – Vol. III, p. 1144.
[47] Docket – Vol. III, pp. 1153 to 1166.
[48] Docket – Vol. III, pp. 1167 to 1170.
[49] Docket – Vol. III, pp. 1173 to 1174.
[50] Exhibit "R-9", Docket – Vol. III, pp. 865 to 874; and Minutes of the hearing held on, and Order dated, April 25, 2024, Docket – Vol. III, pp. 1178 and 1181, respectively.
[51] Exhibit "R-18", Docket – Vol. III, pp. 901 to 910; and Minutes of the hearing held on, and Order dated, April 25, 2024, Docket – Vol. III, pp. 1178 and 1181, respectively.
[52] Exhibit "R-21", Docket – Vol. III, pp. 938 to 944; and Minutes of the hearing held on, and Order dated, April 25, 2024, Docket – Vol. III, pp. 1178 and 1181, respectively.
[53] Docket – Vol. III, pp. 1182 to 1187.
[54] Docket – Vol. III, pp. 1189 to 1193.
[55] Docket – Vol. III, pp. 1195 to 1196.
[56] Docket – Vol. III, pp. 1197 to 1221.
[57] Docket – Vol. III, pp. 1223 to 1258.
[58] Minute Resolution dated August 29, 2024, Docket – Vol. III, p. 1259.

THE STIPULATED ISSUE

The parties stipulated on the following issue for resolution of this Court, to wit:

> WHETHER PETITIONER IS LIABLE FOR DEFICIENCY VALUE ADDED TAX IN THE AMOUNT OF ₱16,529,053.04.[59]

Petitioner's arguments

Petitioner argues that this Court has jurisdiction over this case. It further claims that the WDL was issued prematurely, as the alleged assessment it seeks to collect has not yet become final and executory due to the pending administrative appeal with respondent; hence, the assessment is not a delinquent tax that can be collected against petitioner. Petitioner maintains that it was denied due process when respondent completely disregarded the evidence it presented and refused the offer to submit evidence in relation to the assessment. Petitioner avers that the assessment is void for the lack of authority of RO Carmina Luzano and GS Daniel Mendizabel and that the assessment has no legal and factual basis.

Respondent's counter-arguments

Respondent contends that, assuming *arguendo* the request for reconsideration was properly filed with him, this Court nonetheless has no jurisdiction over the subject matter, as the *Petition for Review* was prematurely filed. He posits that the protest filed by petitioner on January 9, 2020 is a request for reconsideration. Alternatively, assuming *arguendo* that the protest is a request for reinvestigation, respondent argues that the Court still has no jurisdiction, as the assessment has long been final, executory and demandable. Respondent asserts that the assessment is valid and there is no violation of petitioner's right to due process.

THE COURT'S RULING

The present *Petition for Review* is partially granted.

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[59] Statement of the Issue, JSFI, Docket – Vol. III, p. 1113.

The Court has jurisdiction over the Petition for Review.

Jurisdiction over the subject matter is required for a court to act on any controversy. It is conferred by law and not by the consent or waiver upon a court. As such, if a court lacks jurisdiction over an action, it cannot decide the case on the merits and must dismiss it.[60] To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[61]

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125[62], as amended by RA No. 9282[63], provide as follows, to wit:

> 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 <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphases and underscoring supplied*)
>
> xxx xxx xxx
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. *(Emphases added)*

Based on the foregoing provisions, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other matters that arise out of the National Internal Revenue Code (NIRC) or related laws administered by respondent.[64]

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[60] *CE Casecnan Water & Energy Co., Inc. vs. Province of Nueva Ecija*, G.R. No. 196278, June 17, 2015.

[61] *Commissioner of Internal Revenue vs. Villa and The Court of Tax Appeals*, G.R. No. L-23988, January 7, 1968.

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

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

[64] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

In *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital),*[65] the Supreme Court ruled as follows:

> *The CTA has jurisdiction over the present case*
>
> The CIR assails the jurisdiction of the CTA to hear the present case. The CIR argues that the reliance on the WDL as the basis for the MMS' Petition for Review was misplaced since the FDDA should be the basis for the action in the CTA.
>
> Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also 'other matters' arising under the NIRC:
>
> xxx xxx xxx
>
> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*,[66] the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or 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 BIR. The wordings of the provision is clear and simple. **<u>It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy</u>.**" *(Emphasis and underscoring added)*

Thus, it is settled that the validity of a WDL is an issue which falls under "*other matters arising under the National Internal Revenue Code*" that is within the jurisdiction of this Court to decide upon. Considering that in the present *Petition for Review*, what is being primarily assailed is the WDL No. RR8B-WDL-21-06-16-00060[67] issued by the BIR (the chief of which is the respondent),[68] the same can then be taken cognizance of by this Court.

Pursuant to the aforequoted Section 11 of RA No. 1125, as amended, petitioner had 30 days from receipt of the WDL No. RR8B-WDL-21-06-16-00060 on August 2, 2021, or until September 1, 2021, within which to file its appeal before this Court.

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[65] G.R. No. 255473, February 13, 2023.

[66] G.R. No. 258947, March 29, 2022.

[67] Exhibit "P-13", Docket – Vol. II, p. 456; and Exhibit "R-20", Docket – Vol. III, p. 946; and par. 1 and *Prayer* (No. 4), *Petition of Review With Urgent Motion To Lift Warrant of Distraint and/or Levy*, Docket – Vol. I, pp. 17 and 48, respectively. cf: Par. 13, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1113.

[68] Section 3, National Internal Revenue Code of 1997.

However, relative to the filing of petitions before this Court, the Supreme Court had issued the following administrative circulars ordering the physical closure of courts and extending the filing of petitions and appeals, complaints, motions, pleadings, and court submissions in the National Capital Judicial Region and nearby provinces due to the surge of Covid-19 cases, *viz.*:

Administrative Circular (AC) No.	Date Issued	Subject Matter/Content
AC No. 56-2021	July 30, 2021	**Re: Court Operations on 2-20 August 2021** The time for filing and service of pleadings and motions during this period was **SUSPENDED** and resumed after seven calendar days counted from the first day of the physical reopening of the relevant court.
OCA Circular No. 114-2021	Aug. 20, 2021	**Re: Court Operations Starting 23 August 2021** The time for filing and service of pleadings and motions during this period was **SUSPENDED** and resumed after seven calendar days counted from the first day of the physical reopening of the relevant court.
OCA Circular No. 117-2021	Aug. 28, 2021	**Re: Reiteration of OCA Circular No. 114-2021, Dated 20 August 2021** The time for filing and service of pleadings and motions during this period was **SUSPENDED** and resumed after seven calendar days counted from the first day of the physical reopening of the relevant court.
OCA Circular No. 119-2021	Sep. 7, 2021	**Re: Court Operations Beginning 8 September 2021** The time for filing and service of pleadings and motions during this period was **SUSPENDED** and resumed after seven calendar days counted from the first day of the physical reopening of the relevant court, unless otherwise expressly ordered by the relevant court which considered the physical closure of the courts and the granular lockdowns.

AC No. 72-2021	Sep. 15, 2021	**Re: Court Operations Beginning 16 September 2021** The time for filing and service of pleadings and motions during this period **REMAINED SUSPENDED** and resumed after seven calendar days counted from the first day of the physical reopening of the relevant court, unless otherwise expressly ordered by the relevant court which considered the physical closure of the courts and the granular lockdowns in the different areas.
AC No. 75-2021	Oct. 1, 2021	**Re: Court Operations Beginning 4 October 2021** The time for filing and service of pleadings and motions during this period **REMAINED SUSPENDED** until further notice.
AC No. 83-2021	Oct. 18, 2021	**Re: Court Operations Beginning October 20, 2021 Until October 29, 2021** The suspension of the time for filing ang service of pleadings and motions, regardless of the alert level or community quarantine, was **LIFTED**. **<u>Pursuant to Administrative Circular No. 72-2021</u>**, the period for filing and service resumed seven calendar days from October 20, 2021.
AC No. 85-2021	Oct. 27, 2021	**Re: Court Operations From November 2 Until November 5, 2021** To reiterate as stated in Administrative Circular No. 83-2021 dated October 18, 2021, the period for filing and service of pleadings and motions resumed seven calendar days from October 20, 2021.

Thus, the 30-day reglementary period to file petition before this Court was suspended from August 2, 2021, and resumed only after seven days from October 20, 2021, or on October 27, 2021. Such being the case, petitioner had until November 26, 2021 within which to file its *Petition for Review.*

Correspondingly, the *Petition for Review with Urgent Motion to Lift Warrant of Distraint and/or Levy* respectively filed *via* electronic mail and courier on September 2, 2021[69] and September 6, 2021, which was received

[69] Considering that it was filed by email after 4:30 p.m. cut-off time on September 1, 2021, it was considered as filed on the next working day, September 2, 2021 pursuant to CTA *En Banc* Resolution No. 4-2021 dated February 24, 2021.

by the Court on September 22, 2021[70] was clearly within the reglementary period. Hence, this Court has jurisdiction to entertain the present case.

The subject WDL is void for having been issued prematurely.

Petitioner is of the position that the subject WDL was prematurely issued as the alleged assessment it seeks to collect has not yet become final and executory because of the pending administrative appeal with respondent; and hence, the assessment is not a delinquent tax, which can be collected against petitioner.

The Court agrees with petitioner.

Section 6(A) of the NIRC of 1997 reads as follows:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> **The tax or any deficiency tax so assessed shall be paid <u>upon notice and demand from the Commissioner or from his duly authorized representative</u>.**
>
> xxx xxx xxx *(Emphasis and underscoring added)*

Thus, once a tax or deficiency tax assessment has been issued by the BIR after the examination of the taxpayer, such taxpayer so assessed, upon notice and demand from respondent or his duly authorized representative, is under obligation to pay the said assessment.

The "notice and demand" referred to under Section 6(A) is consistent with the jurisprudential definition of an "assessment", viz.:

> In the context in which it is used in the NIRC, **an assessment is a <u>written notice and demand</u> by the Bureau of Internal Revenue on the**

[70] Docket – Vol. I, pp. 7 to 14 and 17 to 52.

> **taxpayer for the settlement of a due tax liability that is there definitely set and fixed.**"[71] *(Emphasis and underscoring added)*
>
> **An assessment contains not only a computation of tax liabilities, <u>but also a demand for payment</u> within a prescribed period.** It signals the time when the penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine the remedies thereon, due process requires that it must be served on and received by the taxpayer."[72] *(Emphasis and underscoring added)*
>
> An assessment fixes and determines the tax liability of a taxpayer. **As soon as it is served, <u>an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded</u>.**"[73] *(Emphasis and underscoring added)*

Thus, a tax assessment, which is duly issued by the BIR and duly served upon the concerned taxpayer, creates an obligation upon the latter to pay the assessed tax.

And in case the said taxpayer fails to fulfill its obligation to pay the assessed tax, Section 205 of the NIRC of 1997, as amended, then provides for the remedies available to the government for the collection thereof. Said provision reads, in part, as follows:

> SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – **The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto <u>resulting from delinquency</u>** shall be:
>
> (a) **By distraint** of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, **and by levy** upon real property and interest in or rights to real property; and
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).
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> xxx xxx xxx. *(Emphasis and underscoring added)*

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[71] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[72] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corp., et al.*, G.R. No. 128315, June 29, 1999.
[73] *Callanta, et al. vs. Office of the Ombudsman, et al.*, G.R. Nos. 115253-74, January 30, 1998.

To be sure, Section 205 requires delinquency, meaning **the taxpayer must have failed to pay the assessed tax within the period stated in the notice and demand.**[74] Thus, in case of such failure to pay, the BIR may commence the collection of the assessed tax by, *inter alia*, distraint and/or levy.

The NIRC of 1997, as amended, however, did not define the term *delinquent taxes*. In this regard, the BIR, in Revenue Regulations (RR) No. 4-2019,[75] provided for instances when a tax becomes delinquent, which include, among others, the failure to pay the tax due on the prescribed due date provided in the FAN/FLD and for which the taxpayer failed to file an appeal to this Court or an administrative appeal before the CIR within 30 days from receipt of the decision denying the request for reinvestigation or reconsideration.

While the said RR pertains to the implementing rules for RA No. 11213, or the Tax Amnesty Act, the enumerated instances therein nonetheless embody tax principles which are also generally applied to tax assessments. In fact, in RR No. 12-99,[76] the same principles are provided for.[77]

Jurisprudence supports this construction. In *Light Rail Transit Authority vs. Bureau of Internal Revenue*,[78] the Supreme Court categorically held that a FDDA, when timely appealed before the CIR, can not be deemed final, executory and demandable.

The Final Decision on Disputed Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.

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[74] *People of the Philippines vs. Joel C.Mendez, et seq.*, G.R. Nos. 208310-11 and 208662, March 28, 2023.

[75] Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act," Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.

[76] 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.

[77] SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

xxx xxx xxx

3.1.5 Disputed Assessment. — xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

[78] G.R. No. 231238, June 20, 2022.

> 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.** (*Emphasis supplied*)

This doctrine finds further support in the recent RR No. 9-2024[79] which affirms that by virtue of the direct pronouncement of the Supreme Court in the above-quoted case, the BIR is prohibited or prevented from proceeding with collection through the issuance of a WDL, on the premise that the deficiency tax assessment is not yet delinquent because of a pending valid and timely appeal with the Office of the respondent.

Corollary thereto, the last paragraph of Section 2 of RR No. 9-2024 provides that the running of the Statute of Limitations, particularly the period to collect, shall be suspended during the pendency of a valid and timely administrative appeal, and for 60 days thereafter, and shall continue to run again upon the lapse of 60 days from the date of issuance of the Decision of the respondent on the administrative appeal.

Taken together, the law and regulations harmonize to the end that the government's right to collect is preserved through the suspension of the statute of limitations while the taxpayer is protected from premature and unwarranted collection efforts while its appeal remains unresolved.

In the present case, petitioner received the FDDA with attached Details of Discrepancies on August 25, 2020. Petitioner appealed the FDDA before the Office of the Commissioner on September 24, 2020. Pending action by the Commissioner on the appeal, however, petitioner received the questioned Warrant of Distraint and/or Levy No. RR8B-WDL-21-06-16-00060 on August 2, 2021, demanding the payment of deficiency VAT as

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[79] Implementing Section 223 of the National Internal Revenue Code of 1997, as Amended, on the Suspension of the Running of Statute of Limitations, May 28, 2024.

reflected in the FDDA, in the amount of ₱16,529,053.04, inclusive of interest.

Correspondingly, as applied to this case, and on the basis of the foregoing provisions and jurisprudential pronouncements, it cannot be said that petitioner failed to pay the subject deficiency taxes *per se* since the taxpayer availed of the option of timely elevating its protest through a request for reconsideration before the respondent. Such option was stated by the CIR himself in the FDDA, to wit:

> In view thereof, you are requested to pay your aforementioned deficiency tax liabilities, through the duly authorized agent banks in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605) within the time as shown in the enclosed assessment notice. xxx
>
> This is our final decision. **If you disagree, you or your authorized representative may appeal with the Commissioner of Internal Revenue (CIR)** at 5th Floor National Office Building, BIR Road, Diliman, Quezon City or with the Court of Tax Appeals (CTA) within thirty (30) days from the date of receipt hereof **otherwise**, **the assessment shall become final executory and demandable.** (*Emphasis and underscoring supplied*)

Based on the foregoing, petitioner was required to pay the deficiency tax liabilities **or**, if it disagrees with the assessment, to appeal with the CIR within 30 days from receipt. Clearly, petitioner opted for the latter; hence, with the timely filing of the appeal of the disputed assessment before the respondent, petitioner prevented the assessment from becoming final, executory and demandable. Consequently, the deficiency taxes are not yet delinquent and demandable so as to justify the summary collection remedies commenced by the respondent.

Petitioner's protest is a request for reconsideration.

Petitioner argues that its protest against the FLD/FAN filed on January 9, 2020,[80] is actually a request for reinvestigation in nature as it contained a statement on the submission of documents, particularly photocopies of the credit memos with complete reference of the invoices and scanned copies of the cancelled invoices and its reiteration of its readiness to produce the originals should the BIR so require.[81]

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[80] Exhibit "P-9", Docket – Vol. I, pp. 374 to 379; and Exhibit "R-13", Docket – Vol. III, pp. 918 to 923; and Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.

[81] Par. 16, *Petition for Review with Urgent Motion to Lift Warrant of Distraint and/or Levy*, Docket – Vol. I, pp. 21 to 22.

However, the Court finds that the said protest is **a request for reconsideration**.

Section 228 of the NIRC of 1997 reads:

> Section 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: xxx
>
> 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.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such *form and manner* as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphases, italics and underscoring added)*

Based on the foregoing provision, a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof, by filing either a *request for reconsideration* or a *request for reinvestigation*, **in such form and manner as may be prescribed by implementing rules and regulations.**

Implementing the above-quoted Section 228, particularly the *form and manner* of filing of the requests for reconsideration and for reinvestigation, Section 3 of RR Nos. 12-99, as amended by RR No. 18-2013, and as renumbered by RR No. 7-2018, provides, in part, as follows:

> 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:

> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN[82] within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> **The <u>taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation</u>, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, <u>otherwise, his protest shall be considered *void and without force and effect*</u>.**
>
> xxx xxx xxx
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> xxx xxx xxx. *(Emphases and underscoring added)*

On the basis of the foregoing provisions, the form and manner of protests to be filed by the concerned taxpayer has been clearly and distinctively defined. Particularly, a distinction has been made between the two types of protest, *i.e.*, a *request for reconsideration* and a *request for*

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[82] That is, the *"Formal Letter of Demand and Final Assessment Notice"*.

reinvestigation. Thus, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside.[83]

Clearly, in a *request for reconsideration*, the plea for re-evaluation of the assessment is *"on the basis of existing records without need of additional evidence"*, while in a *request for reinvestigation*, such plea for re-evaluation is *"on the basis of newly discovered or additional evidence that the taxpayer intends to present in the reinvestigation"*. Furthermore, it must be pointed out that the distinction between a *request for reconsideration* and a *request for reinvestigation* is significant for the purpose of identifying which request triggers the application or operation of the 60-day period, within which to submit all relevant supporting documents, as determined by the concerned taxpayer. Apparently, the said 60-day period applies only to *requests for reinvestigation*.

In any case, the protest **<u>must</u>** state the following: (1) the nature thereof (whether *reconsideration* or *reinvestigation*, and in case of the latter, it must specify the newly discovered or additional evidence the taxpayer intends to present); (2) date of the assessment notice; and (3) the applicable law, rules and regulations, or jurisprudence on which his protest is based; otherwise, the protest shall be considered void, and without force and effect.

In this case, it cannot be doubted that petitioner's protest (the letter dated January 6, 2020) against the FLD/FAN filed on January 9, 2020 is <u>a *request for reconsideration*</u>.[84] This is clearly apparent from the introductory part of the said protest which referred to the same as a *"request for reconsideration"*, *viz.*:

> Anent your Letter of Authority eLA No. SN: eLA201600035823 / LOA-V08-2019-0000276 for BSFIL Technologies, Inc. indicated above which was issued April 30, 2019, may it be remembered that your good office issued a Formal Letter of Demand dated December 17, 2019, which we received December 19, 2019. We are submitting this reconciliation on the alleged 'deficiency taxes', in compliance with your instruction for us to forward the same to the Regional Director **<u>with our request for a reconsideration</u>.** *(Emphasis and underscoring added)*

On the basis of the foregoing statements, it is clear that petitioner's intention was to file a *request for reconsideration*. Had the intention been otherwise, petitioner could have simply stated that its protest is a *"request for reinvestigation"*. This is especially true since it is mandated under the aforequoted Section 3.1.5 of RR Nos. 12-99, as amended and renumbered, that the protest must state the nature thereof, whether it be a *request for*

[83] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

[84] Exhibit "P-9", Docket – Vol. I, pp. 374 to 379; and Exhibit "R-13", Docket – Vol. III, pp. 918 to 923; and Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.

reconsideration or a *request for reinvestigation*. Parenthetically, if petitioner would insist that its protest is actually a *"request for reinvestigation"*, but since there is no indication or statement therein that it is so, the said protest would then be considered void. To be sure, a protest which fails to comply with the requirements of RR No. 12-99, as amended by RR No. 18-2013, is void.[85]

In any event, petitioner's supposed clarification that its protest is a *request for reinvestigation*, as stated in its March 9, 2020 letter,[86] is a mere afterthought or conjecture. As already intimated, for *requests for reinvestigation*, the concerned taxpayer must submit all relevant supporting documents within 60 days from the filing of the protest. In this case, there is no indication that petitioner ever submitted the said supporting documents to the BIR, within the said 60-day period, thus, belying petitioner's claim that its protest is a *request for reinvestigation*.

The examination of petitioner was made pursuant to a LOA and thus, the resulting tax assessments are valid.

Petitioner further claims that the assessment is void for lack of authority considering that RO Luzano and GS Mendizabel conducted the examination prior to the issuance of LOA No. eLA201600038500 dated November 11, 2019. Allegedly, in July 2019, petitioner's witness, Mr. Adoremus met and discussed the BIR's supposed findings in the Details of Discrepancies attached to the Notice of Informal Conference, with RO Luzano and GS Mendizabel, who at the time, were not yet authorized to examine and scrutinize its accounting records and books. It further asserts, among others, that as a result of the failed informal conference between them, a PAN was subsequently issued.

The Court does not agree.

At the outset, it must be noted that, aside from the testimony of its witness, Mr. Adoremus, petitioner failed to provide any concrete evidence to support its contention that RO Luzano and GS Mendizabel were already involved in the preliminary stage of assessment, *i.e.*, informal conference, which was prior to the issuance of LOA No. eLA201600038500 dated November 11, 2019.

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85 Refer to *Commissioner of Internal Revenue vs. Court of Tax Appeals-Third Division, et al.*, G.R. No. 239464, May 10, 2021.

86 Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112; Exhibit "P-10", Docket – Vol. I, p. 380.

In civil cases, the party having the burden of proof must establish his/her case by preponderance of evidence. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other or that which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.[87]

Inasmuch as mere allegation is not evidence and is not equivalent to proof, petitioner's bare and unsubstantiated allegation of the supposed participation of RO Luzano and GS Mendizabel in the preliminary stage of assessment, *i.e.*, informal conference, deserves no credence.

On the other hand, the evidence on record clearly shows that RO Chico and GS Alegre-Sison of Revenue Region No. 008 – Makati, were the ones who conducted the examination of petitioner's books of accounts and subsequently recommended[88] the issuance of the PAN issued by respondent on September 17, 2019 and received by petitioner on September 30, 2019.[89] Moreover, prior to their recommendation, RO Chico and GS Alegre-Sison also issued the Preliminary Report of Investigation dated June 26, 2019,[90] for the issuance of Notice for Informal Conference.

Their authority to examine and assess petitioner's books of accounts emanated from LOA No. eLA201600035823, which was received by petitioner on May 6, 2019, authorizing them to examine petitioner's books of accounts and other accounting records for VAT, for the period from January 1, 2017 to June 30, 2017.[91]

Thereafter, on November 14, 2019, petitioner received LOA No. eLA201600038500 dated November 11, 2019 issued by RD Geraldino. The said LOA authorized RO Luzano and GS Mendizabel of Revenue Region No. 08B – South NCR to examine petitioner's books of accounts and other accounting records for VAT, for the period from January 1, 2017 to June 30, 2017.[92]

Pursuant thereto, RO Luzano and GS Mendizabel conducted the examination of petitioner's books of accounts for the period from January 1, 2017 to June 30, 2017. Thereafter, respondent issued the FLD/FAN with

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[87] *Singson vs. Spouses Carpio*, G.R. No. 238714, August 30, 2023.
[88] Exhibit "R-6", BIR Records, pp. 206 to 211.
[89] Exhibits "P-5" and "P-5-a", Docket – Vol. I, pp. 354 to 360; and "R-7", "R-7-1", "R-8" and "R-8-1", Docket – Vol. III, pp. 894 to 900; and Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.
[90] Exhibit "R-3", BIR Records, p. 105.
[91] Exhibit "P-3", Docket – Vol. I, p. 349; and Exhibit "R-2", Docket – Vol. III, p. 876, Docket – Vol. III, p. 875; and Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.
[92] Exhibit "P-7", Docket – Vol. I, p. 367; and Exhibit "R-10", Docket – Vol. III, p. 911; and Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.

Details of Discrepancies dated December 17, 2019[93] and by virtue of Memorandum dated July 6, 2020,[94] signed by RO Luzano and GS Mendizabel, respondent issued the FDDA dated August 20, 2020.[95]

In *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[96] the Supreme Court said:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

Indeed, the power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Under the law, only respondent or his duly authorized representative may authorize the examination of any taxpayer and issue an assessment against him. That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period. To be sure, in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.

As already observed, both RO Chico and GS Alegre-Sison, and RO Luzano and GS Mendizabel were duly authorized then to perform the audit and investigation under LOA No. eLA201600035823 and LOA No. eLA201600038500, respectively. Indisputably, the tax assessments against petitioner were issued under a valid LOA.

The Court cannot rule on the validity of the deficiency tax assessment.

Section 228 of the NIRC of 1997, as amended, provides for the remedies of a taxpayer in case of the inaction of the Commissioner on the protested assessment, to wit:

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93 Exhibits "P-8", "P-8-a" and "P-8-b", Docket – Vol. I, pp. 368 to 373; and Exhibits "R-11", "R-11-1"; "R-12" and "R-12-1", Docket – Vol. III, pp. 912 to 917; and Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1112.

94 Exhibit "R-15", BIR Records, pp. 379 to 386.

95 Exhibits "P-11", "P-11-a" and "P-11-b", Docket – Vol. I, pp. 381 to 389; and Exhibits "R-16", "R-16-1", "R-17" and "R-17-1", Docket – Vol. III, pp. 930 to 937; and Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1113.

96 G.R. No. 242670, May 10, 2021.

> SEC. 228. Protesting of Assessment. – xxx
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (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.

It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, the taxpayer has two options, 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 on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other**.[97]

In this case, the records clearly establish that the taxpayer chose the second option. It opted to await the CIR's final decision, as expressly indicated in its *Petition*:

> 23. On 02 August 2021, respondent issued WDL No. RR8B-21-06-16-00060 ordering the distraint and levy of petitioner's properties in satisfaction of the alleged VAT deficiency assessment amounting to Sixteen Million Five Hundred Twenty-Nine Thousand Fifty-Three Pesos and 4/100 (P16, 529,053,.04), inclusive of interest, for the taxable period from 01 January 2017 to 30 June 2017. Logically and procedurally, for respondent to collect the tax through the summary remedies of distraint and/or levy, there must be a final determination and demand to pay the tax, followed by a refusal to pay by petitioner. **The WDL, however, was issued without petitioner having been served with the final decision on its administrative appeal, thus effectively holding it liable to pay the deficiency tax without being informed why.** (*Emphasis supplied*)

[97] *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012.

The Court therefore cannot consider the assessment to be final and executory pending the CIR's action on its appeal, since this will negate the taxpayer's option — as enshrined in Section 228 of the NIRC of 1997, as amended, and recognized by jurisprudence — to await the CIR's final decision.

Thus, pending appeal before respondent, this Court cannot yet rule on the validity or correctness of the deficiency tax assessments.

Finally, at the risk of sounding repetitive, the Court reiterates the pronouncement of the Supreme Court in *Light Rail Transit Authority vs. Bureau of Internal Revenue*[98] and *Mannasoft Technology Corp. vs. Commissioner of Internal Revenue,*[99] that summary collection remedies are premised on the existence of delinquent taxes and that the collection of non-delinquent and non-demandable assessments are void.

WHEREFORE, premises considered, the instant **Petition for Review** is **PARTIALLY GRANTED**. Accordingly, the Warrant of Distraint and/or Levy No. RR8B-21-06-16-00060 issued on August 2, 2020 is declared **NULL** and **VOID** and is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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98 G.R. No. 231238, June 20, 2022.
99 G.R. No. 244202, July 10, 2023.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice