REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MILESTONE HOLDINGS CORPORATION, *Petitioner,*	**CTA EB NO. 2224** (CTA Case No. 8858)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 27 2022 4:10 p.m.

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DECISION

CUI-DAVID, J.:

This resolves the Petition for Review filed by Milestone Holdings Corporation[1] ("**Petitioner**" or "**MHC**"), pursuant to Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"), assailing

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[1] Filed on 20 February 2020; Rollo, pp. 30-70.

[2] Section 3. Who May Appeal; Period to File Petition. — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] Section 2. Cases Within the Jurisdiction of the Court *En Banc*. — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

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

the Decision of the Special Third Division dated 31 July 2019[5] ("**Assailed Decision**") and Resolution dated 6 January 2020[6] ("**Assailed Resolution**") in CTA Case No. 8858 entitled *Milestone Holdings Corporation vs. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Unit 501, Textron Bldg., 168 Luna Mencias St., Addition Hills, San Juan, Metro Manila.[7] It is likewise duly registered with the Bureau of Internal Revenue ("**BIR**") with Taxpayer Identification Number ("**TIN**") 004-672-802-000.[8]

Its primary purpose is "to invest in, acquire, purchase or otherwise own, lease, use, sell, exchange, transfer, assign, cede, mortgage, pledge, or otherwise dispose of properties of every kind, nature and description, real or personal including securities like shares of stock, commercial papers including but not limited to bonds, debentures, notes, evidences of indebtedness, and other obligations of any corporation or corporations whether domestic or foreign, and as owner or holder of any such real or personal property, stocks, bonds, debentures, contracts, or obligations, to receive, collect and dispose of the income interest, and dividends arising from such property and to possess and exercise in respect thereof all the rights, powers and privileges of ownership, including all voting powers of any stock so owned; to carry on and manage the general business of any company."[9]

Respondent, on the other hand, is the Commissioner of Internal Revenue ("**CIR**"), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the BIR.[10] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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[5] Division Docket, Volume II, pp. 909-928; penned by Associate Justice Esperanza R. Fabon-Victorino (retired), with Associate Justice Ma. Belen M. Ringpis-Liban, concurring.
[6] *Id.*, pp. 969-974.
[7] Rollo, p. 35.
[8] Exhibits "P-28" to "P-28-a", Division Docket, Volume II, p. 574.
[9] Exhibit "P-26-a", *id.*, p. 748.
[10] Section 4, NIRC, as amended.

THE FACTS

On 14 April 2010, petitioner received Letter Notice ("**LN**") No. 042-TRS-07-00-00049 dated 15 March 2010,[11] stating that after the computerized matching of information/data provided by Withholding Agents/Payors and Payees/Income Recipients with its declarations in its income tax returns, value-added tax ("**VAT**") returns, percentage tax returns, and withholding tax remittance returns, the BIR found a discrepancy of P13,173,214.00.

In response to the LN, petitioner filed with the BIR a letter response on 30 April 2010, where it explained that its withholding agent Commonwealth Foods Incorporated ("**Comfoods**") is not its customer but of its affiliate Milestone Petroleum Marketing Corporation ("**MPMC**"). Further, petitioner averred that Comfoods mistakenly indicated in its Alphalist of Payees Subject to Expanded Withholding Tax its TIN instead of MPMC's.

On 20 May 2010, the BIR issued a Follow-Up Letter,[12] wherein it stated that petitioner failed to take any positive action to refute the validity of its findings and/or present any documentary evidence to reconcile the variances indicated therein.

On 21 June 2010, petitioner submitted to the BIR copies of the following remittance returns and information returns, namely: (1) Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) BIR Form No. 1601-E for the months of January to December 2007; (2) Annual Information Return of Creditable Income Taxes Withheld (Expanded) BIR Form No. 1604-E for the taxable year 2007; (3) Monthly Remittance Return of Income Taxes Withheld on Compensation BIR Form No. 1601-C for the months of January to December 2007; and (4) Annual Information Return of Income Taxes Withheld on Compensation BIR Form No. 1604-CF for the taxable year 2007.[13]

Later, the BIR issued a Preliminary Collection Letter ("**PCL**") dated 2 August 2013[14] to petitioner. The PCL requested petitioner to pay its alleged total tax liability of P8,640,158.64.

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[11] Exhibits "R-2" to "R-2.1", BIR Records, p. 2.
[12] Exhibit "P-6", *id.*, p. 485.
[13] Exhibits "P-7" to "P-7-b", *id.*, p. 486.
[14] Exhibit "P-8", Division Docket, Volume II, p. 487.

On 9 October 2013, petitioner received from the BIR a Final Notice Before Seizure ("**FNBS**")[15] demanding payment within ten (10) days from notice; otherwise, a Warrant of Distraint and Levy ("**WDL**") and Garnishment shall be issued to enforce the collection of its alleged tax liability.

On 24 April 2014, a WDL[16] was served upon petitioner by the BIR.

In response thereto, the petitioner filed a Letter with the Collection Division of BIR Revenue Region No. 7 on 22 May 2014,[17] specifically addressed to Alice Gonzales, Chief of the said Collection Division, where it stated that it should not be held liable for the error of its withholding agent and requested for the examination of the record of the case. Another letter of the same tenor was filed by the petitioner on 26 May 2014,[18] addressed to Jonas DP Amora, Regional Director of Revenue Region No. 7.

On 10 June 2014, another letter[19] was filed by the petitioner requesting for the lifting of the WDL for being oppressive, for the cancellation of tax liability imposed against it for lack of factual and legal bases, and for the refund of illegally garnished amount under its account.

Aggrieved and receiving no response, petitioner filed a Petition for Review on 8 August 2014,[20] praying for the lifting of the WDL, cancellation of the assessment issued against it, and the refund of the garnished amount of P51,880.77, with interest of 20% per annum from the time of garnishment until payment. In the Petition, petitioner cited the inaction of respondent as ground therefor. The petition was raffled to the Special Third Division ("Court in Division").

On 16 October 2014, respondent filed his Answer.[21] In his Answer, respondent moved to dismiss the case alleging that the Court has no jurisdiction to entertain the same given that the subject assessment has become final, executory and demandable. According to the respondent, under Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations ("**RR**") No. 12-99, as amended by RR No. 18-2013,

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[15] Exhibit "P-15", *id.*, p. 494.
[16] Exhibit "P-20", *id.*, p. 501.
[17] Exhibits "P-21" to "P-21-b", *id.*, pp. 502-504.
[18] Exhibits "P-22" to "P-22-b", *id.*, pp. 505-507.
[19] Exhibits "P-3" to "P-3-g", *id.*, pp. 465-479.
[20] *Id.*, volume I, pp. 1-20.
[21] *Id.*, pp. 103-108.

a valid administrative protest against the Formal Letter of Demand ("**FLD**")/Final Assessment Notice ("**FAN**") may be filed within thirty (30) days from receipt of such assessment. Failure to file a valid administrative protest shall accordingly render the FLD/FAN final, executory and demandable. However, petitioner allegedly failed to take such remedial action. It failed to timely file a valid protest despite the issuance and service of the FAN and waited until its bank account was garnished by the BIR.

On 20 October 2014, a Notice of Pre-Trial Conference[22] was issued setting the proceeding on 27 November 2014.

Subsequently, on 4 November 2014, petitioner filed a Motion for Judgment on the Pleadings, [23] claiming that respondent's answer failed to tender an issue, and the answer admitted most, if not all, the material allegations of its Petition for Review. In addition, petitioner alleges that the respondent failed to comply with the requisites of a specific denial, hence, respondent is deemed to have admitted the material allegations of its pleading.

On 25 November 2014, petitioner filed an Urgent Motion to Hold Pre-Trial in Abeyance.[24] The motion was granted on 27 November 2014.[25]

On 20 February 2015,[26] the Court denied petitioner's Motion for Judgment on the Pleadings. A Motion for Reconsideration was filed by the petitioner assailing such denial, but such motion was denied on 10 March 2015.[27]

The denial of the Motion for Judgment on the Pleadings and the subsequent Motion for Reconsideration was the subject of petitioner's Petition for Review on Certiorari before the Supreme Court.[28] However, the same was dismissed on 10 August 2015, for petitioner's failure to sufficiently show grave abuse of discretion on the part of the Court of Tax Appeals ("**CTA**") in rendering the assailed resolutions.[29]

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[22] *Id.*, p. 109.
[23] *Id.*, pp. 110-121.
[24] *Id.*, pp. 128-132.
[25] Minutes of the Hearing dated 27 November 2014, *id.*, p. 133.
[26] *Id.*, pp. 140-143.
[27] *Id.*, pp. 169-188.
[28] *Id.*, pp. 202-224.
[29] Notice by the Third Division of the Supreme Court, *id.*, p. 424.

After the Pre-trial Conference, the parties filed their Joint Stipulations on 24 May 2016[30] on the basis of which the Court issued a Pre-Trial Order on 9 June 2016.[31]

During trial, petitioner presented Rosalina M. Bustamante, petitioner's Chief Financial Officer; Annette Emeline C. Gaerlan, senior manager of the accounting department of MPMC; and Joseph Espenocilla, accounting clerk at the Treasury Department of Comfoods, as its witnesses, who all testified by way of Judicial Affidavit.

Bustamante testified on the receipt of the PCL, FNBS, and WDL by the petitioner. She likewise testified on the correspondences that petitioner has sent to the BIR.

Gaerlan claimed that the BIR and Comfoods erroneously mistook petitioner for MPMC, the seller in the transactions with Comfoods but the taxes thereof were assessed against petitioner which had no participation in the said transactions

Espenocilla confirmed that an error was committed in the alpha list of payees for the year ended 31 December 2007, that was given to MPMC, which error he discovered only when petitioner informed Comfoods of its problem with the BIR. Specifically, petitioner's TIN, instead of MPMC's, was indicated in the documents requested by the latter from Comfoods. According to him, it occurred possibly because petitioner was Comfoods' supplier of bunker oil until 2007.

Thereafter, respondent presented its lone witness, Leona R. Nuguid, who testified that she was the Revenue Officer ("**RO**") who initiated the collection of petitioner's delinquent account through summary remedies. She likewise prepared the PCL and the FNBS for issuance and service to petitioner.

Per Resolution dated 30 January 2018,[32] respondent rested after his Motion to Admit Formal Offer of Exhibits with attached Formal Offer of Evidence filed on 11 October 2017[33] was granted.

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[30] *Id.*, Volume II, pp. 585-591.
[31] *Id.*, pp. 593-601.
[32] *Id.*, pp. 861-864.
[33] *Id.*, pp. 831-840.

The case was submitted for decision on 2 August 2018[34] after petitioner filed its Memorandum with Manifestation on 10 July 2018.[35] Despite notice, respondent failed to file any.[36]

The Court in Division promulgated the Assailed Decision wherein it dismissed petitioner's Petition for Review on the ground of lack of jurisdiction. The dispositive portion reads:

> "**WHEREFORE**, the Petition for Review filed by Milestone Holdings Corporation on August 4, 2014, is **DISMISSED** on jurisdictional ground.
>
> **SO ORDERED**."

The Special Third Division ruled that the Petition for Review was not timely filed, disabling the Court from obtaining jurisdiction over the subject matter. According to the Assailed Decision, petitioner only had thirty (30) days from receipt of a copy of a decision or ruling which affects the taxpayer to file a Petition for Review before the CTA.

Hinging from the explicit statement in the Petition for Review that the petitioner seeks the cancellation and nullification of the WDL, the Assailed Decision concluded that the counting of the 30-day period to question the WDL would be from the date it has received such WDL.

The Court in Division observed that petitioner received the WDL on 24 April 2014; thus, it only had until 26 May 2014[37] to file the Petition for Review with the CTA. The petitioner was able to actually file the Petition for Review on 8 August 2014, which, according to the Special Third Division, was beyond the prescribed 30-day period to seek judicial intervention.

On 28 August 2019, Petitioner filed its Motion for Reconsideration against the Assailed Decision.[38] Respondent failed to comment.[39] The Special Third Division eventually promulgated the Assailed Resolution[40] denying petitioner's Motion for Reconsideration. The dispositive portion of the Assailed Resolution reads:

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[34] *Id.*, pp. 904-905.
[35] *Id.*, pp. 867-896.
[36] Records Verification Report dated May 22, 2018, *id.*, p. 866.
[37] 24 May 2014 falls on a Saturday; the next working day is on 26 May 2014.
[38] Division Docket, Volume II, pp. 929-964.
[39] Per Records Verification Report dated 18 October 2019, *id.*, p. 967.
[40] *Supra* at note 2.

"**WHEREFORE**, petitioner's Motion for Reconsideration dated August 23, 2019 is **DENIED**, for lack of merit.

SO ORDERED."

Petitioner eventually filed the instant Petition for Review[41] before the Court *En Banc*. Respondent failed to file his comment[42] despite this Court's resolution ordering such.[43] Eventually, after the parties agreed not to have the case mediated before the Philippine Mediation Center – Court of Tax Appeals ("**PMC-CTA**"),[44] the instant Petition was submitted for decision on 9 February 2021.[45]

THE ISSUES

Petitioner assigns the following errors to the Special Third Division's actions, namely:

> I.
> THE SPECIAL THIRD DIVISION ERRED IN CHARACTERIZING THE ISSUANCE OF WARRANT OF DISTRAINT AND/OR LEVY (WDL) AS "OTHER MATTERS" THAT SHOULD HAVE BEEN ELEVATED BY PETITION FOR REVIEW TO THE COURT OF TAX APPEALS (CTA) WITHIN THIRTY (30) DAYS FROM RECEIPT AS THERE IS NO LEGAL BASIS FOR SUCH CHARACTERIZATION;
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> II.
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT PETITIONER MILESTONE HOLDINGS CORPORATION'S FAILURE TO FILE A PETITION FOR REVIEW WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE WARRANT OF DISTRAINT AND/OR LEVY (WDL) IS A JURISDICTIONAL DEFECT UNDER SECTION 3(A)(1), RULE 4, OF THE REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA) IN RELATION TO SECTION 11 OF REPUBLIC ACT (RA) NO. 1125 AS AMENDED BY RA NO. 9282;
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> III.
> THE SPECIAL THIRD DIVISION ERRED IN DISMISSING THEPETITION FOR REVIEW ON THE GROUND OF PETITIONER MILESTONE HOLDINGS CORPORATION'S FAILURE TO FILE THE PETITION WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE WARRANT OF DISTRAINT AND/OR LEVY (WDL) AS THIS ISN'T ONE OF THE ISSUES RAISED BY THE PARTIES. HENCE, THIS ISSUE SHOULD HAVE BEEN BARRED;

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[41] *Supra* at note 3.
[42] Per Records Verification dated 06 October 2020, *id.*, p. 358.
[43] See Resolution dated 11 March 2020, Rollo, pp. 355-357.
[44] Per PMC-CTA Form No. 6 – No Agreement to Mediate, *id.* p. 364.
[45] See Resolution dated 09 February 2021, *id.*, pp. 366-367.

IV.

THE WARRANT OF DISTRAINT AND/OR LEVY (WDL) CANNOT BE THE SOURCE OF A LEGITIMATE CLAIM ON THE PART OF RESPONDENT COMMISSIONER OF INTERNAL REVENUE (CIR) AND THE GOVERNMENT SINCE IT IS A PATENT NULLITY;

V.

THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE ISSUANCE OF A WARRANT OF DISTRAINT AND/OR LEVY (WDL)IS AN "OTHER MATTER" THAT SHOULD HAVE BEEN ELEVATED BY PETITION FOR REVIEW TO THE COURT OF TAX APPEALS (CTA) SINCE THIS WILL BE IN VIOLATION OF THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES IN ADMINISTRATIVE LAW;

VI.

IN APPLYING THIS COURT'S RULING IN JOWELLES AUTOPARTS, INC. v. BUREAU OF INTERNAL REVENUE, CTA EB NO. 1594 (CTACASE NO. 9333), THE SPECIAL THIRD DIVISION HAS USED A TECHNICAL RULE OF PROCEDURE TO DEFEAT A SUBSTANTIAL RIGHT AND DEPRIVE PETITIONER MILESTONE HOLDINGS CORPORATION OF PROPERTY WITHOUT DUE PROCESS OF LAW; AND,

VII.

THE SPECIAL THIRD DIVISION ERRED IN FINDING THAT PETITIONER MILESTONE HOLDINGS CORPORATION'S CLAIM IS BARRED BY SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, SINCE IT FAILED TO FILE AN ADMINISTRATIVE PROTEST WITHIN THIRTY (30) DAYS AND THAT THE SUBJECT ASSESSMENTS HAD BECOME FINAL AND UNAPPEALABLE.

PETITIONER'S ARGUMENTS

Petitioner calls the instant Petition a classic case of a conflict between substance versus form or technicalities; between merits of a case versus the enforcement of technical rules.

Accordingly, petitioner assails the ruling of the Special Third Division in characterizing the issuance of the WDL as "other matters".

The petitioner further contends that the Court in Division erred in ruling that its failure to file a petition for review within 30 days from the receipt of WDL is a jurisdictional defect. Further, petitioner points out that this issue was not raised by the parties in the proceedings before the Special Third Division.

Petitioner further alleges that the WDL cannot be the source of a legitimate claim on the part of the respondent since it results from acts that are patently null.

Petitioner likewise forwards the argument that the pronouncement of the Special Third Division that the issuance of the WDL should have been elevated by petition for review to the CTA is in violation of the principle of exhaustion of administrative remedies.

In addition, the petitioner states that the application of *Jowelles Autoparts, Inc. vs. Bureau of Internal Revenue*,[46] a case decided by this Court *En Banc*, merely uses a technical rule of procedure to defeat a substantial right and deprive petitioner of property without due process of law. Petitioner likewise states that decisions of this Court do not constitute binding precedents, in contrast with decisions of the Supreme Court.

THE RULING OF THE COURT *EN BANC*

The instant Petition is not impressed with merit.

The instant Petition for Review was timely filed.

Before we discuss the merits of the case, we shall first determine whether this Petition for Review before the Court *En Banc* was timely filed.

The assailed Decision of the Special Third Division, promulgated on 31 July 2019,[47] was received by the petitioner on 13 August 2019. On 28 August 2019, within fifteen (15) days from receipt of the assailed Decision, petitioner filed its Motion for Reconsideration.[48]

The Court in Division then promulgated the Assailed Resolution[49] on 6 January 2020 denying petitioner's Motion for Reconsideration, and such was received by petitioner on 22 January 2020.

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[46] CTA EB No. 1594 (CTA Case No. 9333).
[47] Division Docket, Volume II, pp. 909-928; penned by Associate Justice Esperanza R. Fabon-Victorino (retired), with Associate Justice Ma. Belen M. Ringpis-Liban, concurring.
[48] Division Docket, Volume II, pp. 929-964.
[49] *Supra* at note 2.

A Motion for Extension of Time to File Petition for Review was filed by petitioner on 5 February 2020, which was granted by this Court on 7 February 2020. Pursuant to the grant of the motion, petitioner had until 21 February 2020 to file its Petition for Review before the Court *En Banc.*

The present Petition for Review was timely filed on 20 February 2020.

We shall now proceed to discuss the merits of the Petition.

There is no cogent reason to deviate from the assailed Decision and Resolution of the Special Third Division.

After considering the issues raised and the arguments propounded by the petitioner, the Court *En Banc* finds no cogent reason to deviate from the assailed Decision and Resolution of the Special Third Division. Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments and elucidate on the conclusions reached by the Court in Division.

The jurisdiction of the CTA is not limited to decisions of the CIR involving assessments or refunds but also includes "other matters" arising under the NIRC, as amended, or other laws administered by the BIR.

Section 7 of Republic Act (RA) No. 1125,[50] as amended by RA No. 9282,[51] provides the jurisdiction of the Court of Tax Appeals. Section 7(a)(1) 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 or other laws administered by the Bureau of Internal Revenue. [*Emphasis and underscoring supplied.*]

[50] *Supra* at note 57.
[51] *Supra* at note 58.

The same provision is likewise reflected in Section 3(a)(1), Rule 4 of the RRCTA,[52] *viz.*:

> *"SEC. 3. Cases within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" [*Emphasis and underscoring supplied.*]

Based on the foregoing, the jurisdiction of the CTA is not limited to decisions of the CIR involving assessments and refunds, but also includes "**other matters**" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, [53] the Supreme Court clarified the jurisdiction of the CTA over "**other matters**" and further ruled that the CTA's jurisdiction over 'disputed assessments' and over 'other matters', are **separate and independent of each other**. Said the Supreme Court:

> "The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "**other matters**"..., can be found in number (1) of the aforementioned provision, to wit:
>
> > Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
> >
> > 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters** arising under

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[52] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[53] G.R. No. 169225, 17 November 2010.

> the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue.
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> ... ...
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is **not limited** to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers **other cases** that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).
>
> ... ...
>
> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "**other matters**" arising under the NIRC or other laws administered by the BIR as **separate and independent** of each other. ... [*Emphasis and underscoring supplied.*]

Petitioner posits in the first and second assigned errors in the present case that the Court in Division erred in characterizing the issuance of the WDL as "**other matters**" that should have been elevated by petition for review to the CTA within 30 days.

The Court *En Banc* disagrees with the petitioner and sustains the Court in Division's ruling that the determination of the validity of the WDL falls within the ambit of "other matters". The pertinent portions of the assailed Decision and Resolution respectively read as follows:

Decision dated 31 July 2019:

> "Significantly, in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* the Supreme Court ruled that "the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. 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."
>
> It is clear from the foregoing and as provided under the second part of Section 7(a)(1) of R.A. No. 1125, as amended, this Court has the competence to determine whether a

warrant of distraint and levy was validly issued by the BIR. Such issue falls within the ambit of **other matters** arising under the NIRC or other laws administered by the BIR.

Applying the above rules and jurisprudence, this Court has jurisdiction to entertain the present Petition for Review, praying for the lifting of the WDL issued by respondent and cancellation of tax liability allegedly incurred by petitioner. [*Emphasis and underscoring supplied.*]

Resolution dated 06 January 2020:

"There is no merit in petitioner's contention that the phrase "**other matters**" mentioned in Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, does not include the determination of the WDL's validity. As held in *Pantoja vs. David*, the CTA is the proper legal forum to adjudicate the propriety of respondent or his agent's issuance of WDL, viz.:

> The power of the Court of Tax Appeals to act on petitions for the annulment of distraint orders by the Collector of Internal Revenue has been recognized by this Court in *Collector of Internal Revenue v. Zulueta*, 53 Off. Gaz. 6532 and *Blaquera v. Rodriguez*, 54 Off. Gaz. 8632. In the first, the reason for annulling was - like the present case - prescription of the right of the Collecting Officers to issue the warrant of distraint. In the second, this Court reiterated the view that the Court of Tax Appeals constituted the legal forum wherein to discuss the validity of a distraint by the Collector of Internal Revenue. Again, in *Collector v. Avelino*, L-9202, November 19, 1956, we held that proceedings to invalidate a warrant of distraint or levy did not violate the prohibition against injunctions to restrain the collection of taxes, because the proceedings were directed at *the right* of the Collector to collect it *by distraint* or levy. (See also Castro v. Blaquera, 54 Off. Gaz 2135.)
>
> In view of these rulings the power and authority of the court a *quo* may not be denied. If and when the allegations of Pantoja are properly proved, it may and should annul the distraint levied on his property." [*Emphasis and underscoring supplied.*]

In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,[54] the Supreme Court held that the WDL falls within the CTA's jurisdiction to review by appeal "**other matters**" arising under the NIRC, to wit:

> "First, the CTA can take cognizance of BPI's petition. The questions surrounding the CIR's right to assess and collect deficiency taxes which stemmed from the CIR's issuance of the **warrant of distraint and/or levy falls within the CTA's exclusive appellate jurisdiction to review by appeal "other matters** arising under the [NIRC] or other laws administered by the [BIR]." [*Emphasis and underscoring supplied; citations omitted.*]

In its own analysis in the same case, the Supreme Court has this to say:

> "**The law expressly vests the CTA the authority to take cognizance of "other matters"** arising from the 1977 Tax Code and other laws administered by the BIR **which necessarily includes rules, regulations, and measures on the collection of tax**. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement." [*Emphasis and underscoring supplied.*]

Even more recently, the Supreme Court echoed the above pronouncements in *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue (La Flor)*,[55] to wit:

> "In *Philippine Journalists*, we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7 (a) (2) of RA 9282 also covers "**other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480." [*Emphasis and underscoring supplied.*]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue (Philippine Journalists)*[56] cited in *La Flor* and in the assailed Decision of the Court in Division, the Supreme Court held that the CTA's appellate jurisdiction encompasses the determination of whether the WDL issued by the BIR is valid, *viz.*:

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[54] G.R. No. 227049, 16 September 2020.
[55] G.R. No. 202105, 28 April 2021.
[56] G.R. No. 162852, 16 December 2004, 488 SCRA 218-235.

> "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**. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." [*Emphasis and underscoring supplied; citations omitted.*]

Based on the foregoing rules and jurisprudential pronouncements, the issue relative to the validity of a WDL falls within the ambit of the CTA's jurisdiction under "other matters arising under the NIRC or other laws administered by the BIR."

However, while the Court in Division may obtain jurisdiction to pass upon the validity of the WDL issued by the respondent, the same is subject to the timely filing of the Petition for Review. Therefore, it is imperative for this Court to determine whether the Petition before the Court in Division was timely filed.

The Petition for Review in CTA Case No. 8858 was not timely filed; hence, the Court in Division did not err in dismissing the same.

As regards to the timeline of the Petition for Review, Section 11 of RA 1125,[57] as amended by RA 9282,[58] provides for the period of appeal, to wit:

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[57] An Act Creating the Court of Tax Appeals, 16 June 1954.
[58] 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, 30 March 2004.

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> 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.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **<u>within thirty (30) days from the receipt of the decision or ruling</u>** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ..." [*Emphasis and underscoring supplied.*]

Moreover, Section 3(a), Rule 8 of the RRCTA, which implements the above provision, states:

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

Accordingly, in case of an adverse decision or ruling, or inaction of the CIR, the taxpayer is given a period of **<u>thirty (30) days</u>** from receipt of the decision or ruling, or the expiration of the period fixed by law, to file a Petition for Review with the CTA.

In this case, petitioner alleges in the second and third assigned errors that its failure to file the petition for review within 30 days from receipt of the WDL was not a jurisdictional defect; and that the Court in Division erred in dismissing the petition on the said ground (failure to file the petition within 30 days from receipt of the WDL) as this is not one of the issues raised by the parties.

We are not convinced.

These 'assigned errors' raised by the petitioner against the Court in Division have already been passed upon by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.* (*South Entertainment*).[59]

In this case, the Supreme Court ruled that the failure to comply with the **30-day period** would deprive the CTA of jurisdiction to hear and try the case. It was further ruled that the **30-day period** to appeal before the CTA shall be counted from the receipt of the WDL, *viz*:

> "...Failure to comply with the **30-day period** would deprive the Court of Tax Appeals of jurisdiction to hear and try the case.
>
> ...On June 22, 2010, a Warrant of Distraint and Levy was issued and served against respondent.
>
> The Warrant of Distraint and Levy on June 22, 2010 constitutes a constructive denial or rejection of respondent's claim in its June 19, 2008 letter. It is petitioner's final decision on respondent's belated protest that is appealable to the Court of Tax Appeals. **Respondent should have filed its appeal to the Court of Tax Appeals <u>within 30 days</u>** from June 22, 2010, or on July 22, 2010, but it failed to do so. Instead, respondent filed a request for withdrawal and cancellation of the Warrant of Distraint and Levy on September 29, 2010, or 99 days from receipt of the Warrant.
>
> ... ...
>
> At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, <u>this Court has considered this as an implied denial</u>. The taxpayer's remedy then was to **appeal to the Court of Tax Appeals <u>within 30 days</u> from the date that it was notified of the warrant** or collection suit.
>
> ... ...
>
> In this case, respondent's request for withdrawal and cancellation of the Warrant of Distraint and Levy was filed on September 29, 2010, or only after **99 days** from receipt of the Warrant. Petitioner does not deny receipt of respondent's reply letter (containing its protest) to the preliminary collection letter. Finally, there was no such categorical statement in the letter-response dated February 3, 2011 of the Bureau of Internal Revenue Regional Director Romulo L. Aguila, Jr..

[59] G.R. No. 225809, 17 March 2021.

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

Petitioner likewise avers that the Court in Division's reliance with the CTA *En Banc* case of *Jowelles Autoparts, Inc. vs. Bureau of Internal Revenue* [60] (*Jowelle's Autoparts*) is erroneous considering that decisions of the CTA do not constitute binding precedents, in contrast with decisions of the Supreme Court.

We note that this Court's ruling in *Jowelles Autoparts* has already been affirmed by the Supreme Court in a Resolution.[61] The Supreme Court stated:

> "xxx **Since petitioner questioned the validity of the warrant of distraint and/or levy, the period to file an appeal commenced from the date of receipt of said warrant.**
>
> **WHEREFORE**, the petition is **DENIED**. The April 2, 2018 Decision and December 11, 2018 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1594 are **AFFIRMED**." [*Emphasis and underscoring supplied.*]

Clearly, the concept of an appeal being taken from the receipt of a WDL is not novel.

In the instant case, records reveal that on 24 April 2014, the WDL was issued and served on the petitioner; on 20 May 2014, it was informed that a Warrant of Garnishment had been issued by the BIR;[62] on 26 May 2014, it filed with the BIR Revenue Region No. 7 the letters dated 22 May 2014 and 26 May 2014;[63]and on 10 June 2014,[64] it requested for the lifting of the WDL.

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[60] *Supra* at note 46.
[61] Jowelles Auto Parts, Inc. vs. Bureau of Internal Revenue, G.R. No. 243642 (Notice), 21 January 2019.
[62] Paragraphs 24 and 25, *Id.*
[63] Pages 3 to 4, Decision, CTA Case No. 8858; Par. 23, *Id.*
[64] Page 4, Decision, *Id.*

Notwithstanding petitioner's letters dated 22 May 2014 and 26 May 2014 and the request for the lifting of the WDL filed on 10 June 2014, respondent made no further actions after the issuance of the WDL as well as the Warrant of Garnishment.

Applying the ruling in the *South Entertainment* and *Jowelles Autoparts* cases, petitioner's remedy was to appeal to the CTA **within 30 days** from the date that it was notified of the WDL. Thus, it had 30 days from 24 April 2014, or **until 26 May 2014**,[65] to appeal and challenge the validity of the WDL with the CTA. However, it only filed the Petition for Review in CTA Case No. 8858 on **8 August 2014**, which is clearly beyond the **30-day** reglementary period provided by law,[66] rules and regulations,[67] and applicable jurisprudence.[68]

Moreover, even if this Court considers the Warrant of Garnishment as the final and reviewable action of the respondent, and reckons the 30-day period from petitioner's notice of garnishment on 20 May 2014, still the Petition for Review was filed out of time. Accordingly, the Petition for Review was only filed on 8 August 2014 or **eighty (80) days** after petitioner's knowledge of the Warrant of Garnishment.

To underscore, there is no reasonable reckoning period in this case from which to count the 30-day period to appeal to the CTA, other than the receipt of the WDL.

While the right to appeal a decision of the CIR to the CTA is a statutory remedy, the requirement that **appeal must be brought within the prescribed 30-day period is jurisdictional**.[69]

Considering that the WDL was received by the petitioner on 24 April 2014 and the Petition for Review was filed with the Court in Division on 8 August 2014 or **only after 106 days** from notice of the warrant, we conclude that the Petition was not timely filed.

With this, no error can be ascribed to this Court's Special Third Division in dismissing the appeal for lack of jurisdiction.

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[65] 24 May 2014 fell on a Saturday, hence, the next working day was 26 May 2014.
[66] Section 11 of RA 1125,[66] as amended by RA 9282.
[67] Section 3 (a), Rule 8 of the RRCTA.
[68] Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc., G.R. No. 225809, 17 March 2021.
[69] Philippine Dream Company, Inc. vs. Commissioner of Internal Revenue, G.R. No. 216044 (Notice), 27 August 2020, citing CIR vs. Villa, 130 Phil. 3, 7 (1968) and RCBC vs. CIR, 524 Phil. 524, 532 (2006).

The Court has the authority to rule upon any issue related to the case even if not raised by the parties to achieve an orderly disposition of the case.

Petitioner insists that its failure to file the Petition for Review within 30 days from the receipt of WDL was not raised as an issue in the proceedings before the Special Third Division, and therefore, must not be considered by the Court.

We disagree.

Under Section 1, Rule 14 of the RRCTA, this Court, whether sitting in Division or *En Banc,* is not precluded from ruling on any issue not raised that are necessary for an orderly disposition of the case.[70]

The Supreme Court, in *CIR vs. Lancaster Philippines, Inc.,*[71] affirmed the authority of this Court to rule on issues not raised by the parties under the mentioned section, *viz:*

> "On whether **the CTA can resolve an issue which was not raised by the parties**, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. xxx
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." [*Emphasis and underscoring supplied.*]

Furthermore, the Supreme Court, in *Narra Nickel Mining and Development Corp. vs. Redmont Consolidated Mines Corp.,*[72] is emphatic:

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[70] RULE 14 – JUDGMENT, ITS ENTRY AND EXECUTION
SECTION 1. Rendition of judgment. —
... ...
In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
[71] G.R. No. 183408, 12 July 2017.
[72] G.R. No. 202877, 9 December 2015, citing Alcala vs. Villar, 461 Phil. 617, 624 (2003) and Zamora vs. CA, 262 Phil. 298, 309 (1990).

> "**It is a fundamental rule that the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same.** The reason for the rule is that a court without jurisdiction cannot render a valid judgment." [*Emphasis and underscoring supplied.*]

With this, we rule that this Court's Special Third Division properly took cognizance of the issue of the Court's lack of jurisdiction considering that the petition for review was filed way beyond the **30-day prescriptive period**, notwithstanding the fact that it was not raised as an issue by any of the parties.

The timely filing of the Petition for Review before the CTA is not a mere matter of procedure but is mandatory and jurisdictional.

At the risk of being repetitious, we declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[73]

In the prefatory statement of the Petition for Review before this Court, petitioner describes the instant case as "*a classic case of a conflict between substance versus form or technicalities; between merits of a case versus the enforcement of technical rules.*"

Petitioner is misled.

The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is **jurisdictional**.[74]

While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a **jurisdictional** problem as it **deprives** the appellate court of jurisdiction over the appeal.[75]

The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be **strictly** followed.[76]

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[73] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp., G.R. No. 167606, 11 August 2010.
[74] Nuñez vs. GSIS Family Bank, G.R. No. 163988, November 17, 2005 cited in Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp., G.R. No. 167606, 11 August 2010.
[75] *Id.*
[76] *Id.*

In *Republic vs. Dy Chay*,[77] the Supreme Court emphasized:

> "Under Sections 7 and 11 of Republic Act No. 1125, the Court of Tax Appeals **only** assumes exclusive appellate jurisdiction over a case involving a disputed assessment **if and when the same is brought before it within the reglementary period of 30 days** from the taxpayer's receipt of the decision of the Collector of Internal Revenue, and this only takes place when the appeal is taken by the taxpayer who is adversely affected by the decision." [*Emphasis and underscoring supplied.*]

As cited earlier, the Supreme Court, in *Jowelles Auto Parts, Inc. vs. Bureau of Internal Revenue*,[78] stated that:

> "As correctly ruled by the CTA, the allegation of petitioner that the warrant of garnishment and warrant of distraint and/or levy were prematurely issued is of no moment. **The 30-day period provided by law to appeal a decision or ruling of the Commissioner of Internal Revenue is jurisdictional and must be strictly complied with. The right to appeal is not a natural right. It is also not a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal**. Since petitioner questioned the validity of the warrant of distraint and/or levy, the period to file an appeal commenced from the date of receipt of said warrant." [*Emphasis and underscoring supplied.*]

Periods that are mandatory and jurisdictional cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[79]

It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and **precluding the appellate court** from acquiring jurisdiction over the case.[80]

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[77] G.R. No. L-15705, 15 April 1961, 111 SCRA 592-595.
[78] G.R. No. 243642 (Notice), 21 January 2019.
[79] Nippon Express (Phil.) Corp. vs. Commissioner of Internal Revenue, G.R. No. 196907, 13 March 2013, 706 SCRA 442-452.
[80] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corp., G.R. No. 167606, 11 August 2010.

Accordingly, the failure of the petitioner to perfect the appeal on time precluded the Court in Division from acquiring jurisdiction over the case and performing any action thereon except to dismiss the same.

While this Court commiserates with the unfortunate plight of the petitioner, it is bound to apply and give effect to the applicable laws, rules and jurisprudence. Our hands are tied by the fact that the case had already attained finality long before it got here.[81]

When a court or tribunal has no jurisdiction over the subject matter, the only power it has is to **dismiss** the action.[82] After all, the first and fundamental duty of the Court is to apply the law,[83] in this case, the law pertaining to periods to file an appeal which are mandatory and jurisdictional.

In light of the foregoing disquisitions, a discussion on the merits of the case is no longer necessary and appropriate.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Special Third Division's Decision dated 31 July 2019 and Resolution dated 6 January 2020 in CTA Case No. 8858 are **AFFIRMED**.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[81] Coca-Cola Bottlers Phil. Inc. Sales Force Union vs. Coca-Cola Bottlers Phil. Inc., G.R. No. 155651, 28 July 2005, 502 SCRA 748-758.

[82] Velasquez, Jr. vs. Lisondra Land, Inc., G.R. No. 231290, 27 August 2020, citing Mitsubishi Motors Philippines Corporation vs. Bureau of Customs, 760 Phil. 954 (2015), citing Philippine Coconut Producers Federation, Inc. vs. Republic, 679 Phil. 508 (2012); Spouses Genato vs. Viola, 625 Phil. 514 (2010); Perkin Elmer Singapore Pte. Ltd. vs. Dakila Trading Corp., 556 Phil. 822 (2007); Allied Domecq Philippines, Inc. vs. Villon, 482 Phil. 894 (2004); Katon vs. Palanca, Jr., 481 Phil. 168 (2004); and Zamora vs. CA, 262 Phil. 298 (1990).

[83] Del Monte Land Transport Bus, Co. vs. Armenta, G.R. No. 240144, 3 February 2021; Coam Phil., Inc. vs. Lina, G.R. No. 248413 (Notice), 1 July 2020; Bilag vs. Ay-ay, G.R. No. 189950, 24 April 2017, 809 SCRA 236-248; Guy vs. Guy, G.R. No. 184068, 19 April 2016, 785 SCRA 99-116, citing Rizal Commercial Banking Corp. vs. Intermediate Appellate Court, 378 Phil. 10-31 (1999).

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join Presiding Justice Del Rosario's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join Presiding Justice Del Rosario's Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

MILESTONE HOLDINGS CORPORATION, *Petitioner,*	**CTA EB NO. 2224** *(CTA Case No. 8858)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.,* **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**PROMULGATED:** APR 2 7 2022 4:10 p.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

Records disclose that the amount of ₱51,880.77 was garnished by respondent pursuant to warrants of garnishment which petitioner came to know on May 20, 2014 through a Letter sent to it by the Bank of the Philippine Islands (BPI). On June 10, 2014, petitioner filed a Letter dated June 4, 2014, requesting respondent to, among others, refund the taxes illegally collected and garnished in accordance with Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended. On August 8, 2014, petitioner filed a Petition for Review before the Court in Division praying for, among others, the refund of the illegally garnished amount.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the period within which a claim for refund of internal revenue taxes which are erroneously, illegally and wrongfully collected must be

filed. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund,[1] *viz.:*

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: ***Provided, however,*** **That a return filed showing an overpayment shall be considered as a written claim for credit or refund.**" *(Boldfacing supplied)*
>
> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.***- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Boldfacing supplied)*

Since petitioner was furnished with the Letter from BPI on the garnishment of its account on May 20, 2014, the filing of its administrative claim for refund on June 10, 2014 and the Petition for Review before the Court in Division on August 8, 2014, were both done within the prescribed two (2)-year period. **Hence, I submit that the Court has acquired jurisdiction over the present case.**

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[1] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),* G.R. No. 231581, April 10, 2019.

Anent the collection of tax deficiency pursuant to an assessment that is intrinsically void, I submit that such action cannot be legally done. *Ex turpi causa non oritur actio ("No action can arise from an illegal act").*

At once glaring is the fact that the assessments issued against petitioner emanated from a mere **Letter Notice**, and no Letter of Authority was issued to authorize the conduct and audit of its books of accounts. Moreover, the assessments bear no due date for the payment of the alleged deficiency taxes as the appropriate spaces provided in the Assessment Notices were left blank. In essence, these infirmities render the assessment void.

In *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[2] the Supreme Court emphasized the vital significance of an LOA to the validity of an assessment, albeit the assessment was made pursuant to an LN:

> "Xxx both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.
>
> With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. **Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, <u>conversion of LNs to LOAs</u> and assessment and collection of deficiency taxes.**
>
> xxx xxx xxx
>
> In this case, there is no dispute that **no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD**. Therefore no LOA was also served on MEDICARD. **The LN that was issued earlier was also <u>not converted into an LOA</u> contrary to the above quoted provision**. Xxx xxx xxx.
>
> xxx xxx xxx

[2] G.R. No. 222743, April 5, 2017.

> **The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.** Xxx xxx xxx. **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug**, as the CIR would have it. Xxx xxx xxx.
>
> xxx xxx xxx
>
> Xxx xxx xxx. **Simply put, LN is entirely different and serves a different purpose than an LOA**. Due process demands, as recognized under RMO No. 32-2005, that **after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case.
>
> xxx xxx xxx
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is <u>inescapably void</u>.**" *(Citations omitted; boldfacing and underscoring supplied)*

The issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[3] declares:

> "Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment.** Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**" *(Boldfacing supplied)*

In the same vein, *Commissioner of Internal Revenue vs. Fitness By Design*[4] stressed that a final assessment notice without a definite due date for payment is not valid because it negates the demand for payment, *viz.*:

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[3] G.R. No. 178697, November 17, 2010.
[4] G.R. No. 215957, November 9, 2016.

> "**The disputed Final Assessment Notice is not a valid assessment**.
>
> xxx xxx xxx
>
> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.**" *(Boldfacing supplied)*

In other words, the validity of an assessment is indispensable in determining whether the government may enforce collection of alleged tax deficiencies based on such assessment. In the language of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*:[5]

> "In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential to warrant distraint**, if still feasible, and, also, to establish a cause for judicial action.' **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process**, **<u>which vitally includes the issuance of a valid assessment</u>**. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf." *(Additional boldfacing and underscoring supplied)*

Since the assessments involved in the present controversy are undisputedly fraught with fatal infirmities, the Court should not allow the government to benefit therefrom. **Like a void judgment, a void assessment produces no legal effect; it never attains finality and - akin to an outlaw - it should be slain <u>whenever</u> or <u>wherever</u> it exhibits its head.**[6]

The disquisition in *Rene H. Imperial et al. vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City et al. ("Imperial")*,[7] on the effect of a void judgment is enlightening:

> "**A void judgment is no judgment at all in legal contemplation**. In *Cañero v. University of the Philippines,* we held that-

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[5] G.R. No. 197945, July 9, 2018.
[6] G.R. Nos. 178842 and 195509, January 30, 2017.
[7] *Id.*

> x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. **It has no legal or binding effect or efficacy for any purpose or at any place.** It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. x x x
>
> xxx
>
> ***Effects of a void judgment***
>
> xxx
>
> Our ruling in *Gonzales* v. *Solid Cement Corporation* is more unequivocal. In this case, we found that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, therefore acting outside the contemplation of law. **Hence, even when the period to assail the CA decision had already lapsed, we ruled that it did not become final and immutable. A void judgment never becomes final**. x x x."
>
> x x x, our ruling in *Banco Español-Filipino* v. *Palanca* on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a **void judgment is 'a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head**.' In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect.x x x *(Boldfacing and underscoring supplied; citations omitted)*

As oft-repeated, just like in *Imperial*, **a seemingly "final" judgment that is intrinsically void can neither be given the status of finality nor any binding effect, which scenario is no different from an assessment that is patently void**.

All told, I DISSENT and VOTE to: (i) GRANT the Petition for Review filed by petitioner Milestone Holdings Corporation; (ii) REVERSE and SET ASIDE the assailed Decision and assailed Resolution of the Court in Division; and, (iii) ORDER respondent Commissioner of Internal Revenue to refund to petitioner Milestone Holdings Corporation the garnished amount of ₱51,880.77.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

MILESTONE HOLDINGS CORPORATION, Petitioner,	**CTA EB NO. 2224** (CTA Case No. 8858)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 27 2022 4:10 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Lanee S. Cui-David, it is my opinion that strong and compelling reasons exist in this case as to warrant the relaxation of rules governing the statutory period to file an appeal with this Court.

The *ponencia* denied the present Petition for Review and held that due to the untimely filing of petitioner Milestone Holdings Corporation's (**petitioner**) prior Petition for Review, which should have been made within thirty (30) days from receipt of the Warrant of

Distraint and/or Levy[1] (**WDL**) on 24 April 2014, the Court in Division no longer had jurisdiction over the same. In the *ponencia*, it was emphasized that the timely filing of the Petition for Review before this Court is not a mere matter of procedure but is mandatory and jurisdictional.

I respectfully dissent.

Foremost, there is no dispute that appeal is a mere statutory right and its perfection within the statutory period is a jurisdictional requirement. *However*, as would be discussed in detail below, even the Supreme Court is not oblivious of situations where it can be shown that there is a need to relax the strict requirement of filing an appeal within the statutory period, in the interest of justice and in the exercise of its equity jurisdiction.

THERE EXIST STRONG AND COMPELLING REASONS FOR THE COURT *EN BANC* TO CONSIDER THE BELATED PRIOR APPEAL FILED BY PETITIONER.

In *Misnet, Inc. v. Commissioner of Internal Revenue*[2], the Supreme Court, while acknowledging that perfection of an appeal within the statutory period is a jurisdictional requirement, nevertheless allowed the filing of an appeal outside the period prescribed by law **in the interest of justice and in the exercise of its equity jurisdiction**, *viz*:

> ...
> It bears to stress that the perfection of an appeal *within the statutory period* is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.
>
> <u>In the instant case, petitioner allegedly failed to observe the 30-day period within which to appeal the final decision of the CIR to the CTA</u>. As records would show, petitioner admittedly received the FDDA on March 28, 2011. Reckoned from this date of receipt, it has

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1 Exhibit "P-20", Division Docket, Volume II, p. 501.

2 G.R. No. 210604, 03 June 2019; Citations omitted, emphasis and italics in the original text, and underscoring supplied.

until April 27, 2011, within which to appeal with the CTA. However, petitioner filed its appeal (Petition for Review) only on July 26, 2011 or after the lapse of ninety-three (93) days from its receipt of the FDDA. It appears that petitioner's filing of an appeal with the CTA was beyond the statutory period to appeal.

Nonetheless, this Court has on several occasions relaxed this strict requirement. We have on several instances allowed the filing of an appeal outside the period prescribed by law in the interest of justice, and in the exercise of its equity jurisdiction. Thus:

> x x x [F]or a party to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, **strong compelling reasons** such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the rules. Indeed, the Court is confronted with the need to balance stringent application of technical rules *vis-a-vis* strong policy considerations of substantial significance to relax said rules based on equity and justice.

...

Hence, petitioner's belated filing of an appeal with the CTA is not without strong, compelling reason. We could say that petitioner was merely exhausting all administrative remedies available before seeking recourse to the judicial courts. While the rule is that a taxpayer has 30 days to appeal to the CTA from the final decision of the CIR, the said rule could not be applied if the Assessment Notice itself clearly states that the taxpayer must file a protest with the CIR or the Regional Director within 30 days from receipt of the Assessment Notice. Under the circumstances obtaining in this case, we opted not to apply the statutory period within which to appeal with the CTA considering that no final decision yet was issued by the CIR on petitioner's protest. The subsequent appeal taken by petitioner is from the inaction of the CIR on its protest.

...

Moreover, in *La Sallian Educational Innovators Foundation (De La Salle University-College of St. Benilde), Inc. v. Commissioner of Internal Revenue*[3] where the taxpayer timely filed its appeal but paid the docket fees nine (9) days late, the Supreme Court likewise ruled that if a rigid application of the rules of procedure will tend to obstruct

[3] G.R. No. 202792, 27 February 2019; Citations omitted, emphasis, italics and underscoring in the original text and supplied.

rather than serve the broader interests of justice, it may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction, to wit:

> ...
> This Court has ruled in the past that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice and depending on the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.
>
> The Court's pronouncement in *Heirs of Amada Zaulda v. Zaulda* is instructive on this matter, to wit:
>
>> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "**It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice.**" x x x
>>
>> **What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice.** Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. At this juncture, the Court reminds all members of the bench and bar of the admonition in the often-cited case of *Alonso v. Villamar*[.]
>
> Otherwise stated, procedural rules are important tools designed to facilitate the dispensation of justice, but legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve.

...

In other words, while procedural rules are important in the administration of justice, they may be excused for the most persuasive and meritorious reasons in order to relieve a litigant of an injustice that is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

...

Lastly, in a recent case[4], the Supreme Court also set aside technicalities and yielded to practicality, logic, fairness, and substantial justice, *viz*:

...

The Court is well aware of the judicial mandate that rules prescribing the time which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. ...

However, procedural rules were precisely conceived to aid the attainment of justice. **If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.** Section 6, Rule 1 of the Rules of Court enjoins the liberal construction of the Rules of Court in order to promote its objective to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding. As to be discussed below, **given the realities obtaining in this case, the liberal construction of the rules will better promote and secure a just determination of petitioner's culpability.**

...

Withal, as in the liberal construction of the rules on notice of hearing, **the Court has enumerated the factors that justify the relaxation of the rule on immutability of final judgments to serve the ends of justice, including: (a) matters of** life, liberty, honor or **property**; (b) **the existence of special or compelling circumstances**; (c) **the merits of the case**; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) **a lack of any showing that the review sought is merely frivolous and dilatory**; and (f) the other party will not be unjustly prejudiced thereby.

---

[4] *Joel F. Latogan v. People of the Philippines*, G.R. No. 238298, 22 January 2020; Citations omitted and emphasis supplied.

> In one case, the CA dismissed petitioner's appeal for failure to timely file a motion for reconsideration of the RTC's Decision. According to the CA, the RTC decision could no longer be assailed pursuant to the doctrine of finality and immutability of judgments. Upon petition for review, though; **the Court relaxed the application of the doctrine and held that the doctrine must yield to practicality, logic, fairness, and substantial justice.**
>
> ...
>
> In setting aside the aforementioned technicalities, infirmities, and thereby giving due course to tardy appeals and defective petitions, it must be emphasized that the Court is mindful of the extraordinary situations that merit liberal application of the Rules. **In this case where technicalities were dispensed with, the Court's decisions were not meant to undermine the force and effectivity of the periods set by the law. On the contrary, in those rare instances, there always existed a clear need to prevent the commission of a grave injustice as in this case. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.**
>
> ...

In this case, as in the cases mentioned above, I find that there are strong and compelling reasons to warrant the Court's suspension of the rules.

First, a thorough review of the records would reveal that **the examination of petitioner emanated from a mere Letter Notice[5] (LN) without the subsequent issuance of a Letter of Authority (LOA)**. Hence, the examination must be declared a nullity as held in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[6], to wit:

> ...
>
> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment

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5 Exhibits "R-2" to "R-2.1", BIR Records, p. 2.

6 G.R. No. 222743, 05 April 2017; Citations omitted, emphasis, italics and underscoring in the original text.

proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**.

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his

> duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.
>
> ...

This was reiterated in the more recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[7] where the Supreme Court ruled:

> ...
> The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* We have ruled that **the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued**. In that case, We have stated that "**[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case." **The result of the absence of a LOA is the nullity of the examination and assessment** based on the violation of the taxpayer's right to due process.
>
> ...

Second, **the assessments are likewise void in the absence of due dates. The spaces provided therefor were conspicuously left blank**. The Final Assessment Notice[8] (**FAN**) reads as follows:

> ...
> In view thereof, it is requested that you pay the above deficiency taxes, through the duly authorized agent bank (ABB) in which you are enrolled, within the time shown in the accompanying assessment notice.
>
> ...

The two (2) Assessment Notices[9] (**ANs**), however, commonly provide:

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[7] G.R. No. 242670, 10 May 2021; Citations omitted, italics in the original text and emphasis supplied.

[8] Exhibits "P-16" and "P-16-a", Division Docket, Volume II, pp. 495-497; Exhibit "R-6", id., pp. 72-73.

> ...
> PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF LN PAYMENT FORM (BIR FORM NO. 0611A) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE _____ TO ANY ACCREDITED BANK WHERE YOU ARE ENROLLED OR TO _____.
> ...

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[10] (**Fitness By Design**), the Supreme Court similarly invalidated an assessment for lack of due date in the ANs, *viz*:

> ...
> Second, **there are no due dates in the Final Assessment Notice.** This negates petitioner's demand for payment. **Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted.** The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**
>
> **Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities.** The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.

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9 Exhibits "P-17" to "P-17-c" and "P-18" to "P-18-c", id., pp. 498-499.

10 G.R. No. 215957, 09 November 2016; Citations omitted, italics in the original text and emphasis supplied.

> The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the "alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest" for lack of due process. **Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect.**
>
> ...

Similar herein, the subject FAN referred to the ANs for the due dates but the said due dates in the ANs remained unaccomplished.

True, the FAN states that "... the interest and the total amount due will have to be adjusted if paid beyond (June 30, 2011)"[11] and the respective 20% interest in the ANs were computed until 30 June 2011.[12] ***However*, the Supreme Court also rejected the same argument in *Fitness By Design* that the reckoning date of accrual of penalties is the due date; hence, 30 June 2011 cannot likewise be considered as the due date.**

Third, there was a violation of petitioner's right to due process. As early as the filing of its letter dated 26 April 2010[13] (in response to the LN), petitioner already communicated to the Bureau of Internal Revenue (**BIR**) the apparent mistake in its findings and clarified that the withholding agent, Commonwealth Foods, Inc. (**ComFoods**) is not petitioner's customer but that of its affiliate, Milestone Petroleum Marketing Corporation (**MPMC**). Likewise, that ComFoods merely made a mistake in reflecting petitioner's Taxpayer Identification Number (**TIN**) in its Alphalist of Payees (**Alphalist**) instead of MPMC.

Petitioner also reiterated the same when it submitted additional supporting documents through its letter dated 21 June 2010.[14] However, the BIR proceeded to issue the PAN[15] and FAN[16] *without* addressing the explanations made by petitioner, in clear violation of its right to administrative due process.

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11 Exhibit "P-16", Division Docket, Volume II, p. 496.
12 Exhibits "P-17" and "P-18", id., pp. 498-499.
13 Exhibit "P-5" to "P-5-b", id., p. 482.
14 Exhibits "P-7" to "P-7-b", id., p. 486.
15 Exhibit "R-5", BIR Records, pp. 66-68.
16 Exhibits "P-16" and "P-16-a", supra at note 8.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[17], the Supreme Court ruled as follows:

> ...
> **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.
>
> In *Edwards v. McCoy*:
>
> > The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.
>
> In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the tribunal must consider the evidence presented***."
>
> ...
>
> Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the

[17] G.R. Nos. 201398-99, 03 October 2018; Citations omitted, emphasis and italics in the original text.

> issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."
>
> ...

In the same manner, as respondent Commissioner of Internal Revenue (**respondent**) failed to provide reasons for the rejecting petitioner's explanations, the latter's right to due process was evidently violated.

Considering the Supreme Court's consistent declaration in a number of cases[18] that a void assessment bears no valid fruit, it is my opinion that the resulting invalidity of the subject assessments is a strong and compelling reason for this Court to suspend its rules and dispose the belated appeal filed by petitioner on the merits.

Notably, in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[19], the Supreme Court also made it clear <u>that **the assessment becoming final, executory and demandable should be premised on the validity of the assessments**</u>, *viz*:

> ...
>
> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance, the CIR's argument necessarily fails.
>
> ...

Fourth, assuming for the sake of argument that the assessment against petitioner would be considered valid, still, **the totality of the evidence presented and the explanation made by petitioner**

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[18] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010; and *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694, 27 January 2006.

[19] G.R. No. 240729, 24 August 2020.

would prove that the assessments and the subsequent collection based thereon have no basis in fact and in law.

As repeatedly emphasized by petitioner, the assessment merely resulted from an honest mistake made by ComFoods, a withholding agent, when it incorrectly indicated in its Alphalist petitioner's TIN instead of that of its supplier, MPMC.

An admission from an employee of ComFoods[20] and the latter's notarized Certification[21] strongly support petitioner's assertion.

Petitioner's evidence also indubitably show that MPMC accordingly withheld the taxes on the subject transaction and ComFoods remitted the same to the BIR inasmuch as the subject amount was part of its declaration in its Alphalist.[22] *Specifically*, the ₱13,173,214.00 noted discrepancy is the sum of the payments made by ComFoods to MPMC as reflected in the separate Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) in the amounts of ₱6,921,607.00[23] and ₱6,911,607.00[24], less the sales declared by petitioner in its return amounting to ₱660,000.00.[25]

Additionally, the fact that it is MPMC which procured petroleum products for sale to third parties and not petitioner is further corroborated by the Certification[26] issued by Pilipinas Shell Petroleum Marketing Corporation (**Shell**), another third party.

From the foregoing, it is clear that petitioner had no undeclared sales, and the contrary finding of the BIR merely resulted from a mistake of which petitioner had no hand or participation. Evidently, insofar as the subject transactions are concerned, no tax remains unpaid.

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20 Question & Answer No. 28, Judicial Affidavit of Witness Joseph Espenocilla, Division Docket, Volume II, p. 687.
21 Exhibits "P-10" and "P-10-a", id., p. 489.
22 Exhibits "P-12" and "P-12-a", id., p. 694.
23 Exhibits "P-13", "P-13-a", id., p. 695.
24 Exhibits "P-14" and "P-14-a", id., p. 696.
25 See Exhibit "R-2" to "R-2.1", BIR Records, p. 2.
26 Exhibit "P-30", Division Docket, Volume II, p. 576.

If the assailed Decision dated 31 July 2019[27] and Resolution dated 06 January 2020[28] (dismissing petitioner's prior appeal on jurisdictional ground) will be maintained, the void assessment of the BIR against petitioner would necessarily be upheld. Conversely put, the Court *En Banc* will choose to bind itself blindly to the procedural lapse of petitioner and afford it no redress despite the blatant affront to its due process rights.

To reiterate, the records indubitably support that the subject assessments against petitioner: (1) are void as no LOA was issued to authorize the examination; (2) are void due to lack of due dates; (3) are void for violating petitioner's right to due process; and, (4) have no factual or legal bases as there was really no undeclared sales.

PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT PREVIOUSLY GARNISHED.

Considering that the assessments against petitioner should be declared void and without basis, the amount previously garnished from petitioner's bank account with the Bank of the Philippine Islands (**BPI**) should also be considered erroneously or illegally collected under Section 229[29] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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27 Id., pp. 909-928; Penned by Associate Justice Esperanza R. Fabon-Victorino (retired), with Associate Justice Ma. Belen M. Ringpis-Liban. concurring.

28 Id., pp. 969-974.

29 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

In this case, petitioner timely filed its administrative[30] and judicial[31] claims on 10 June 2014 and 08 August 2014, respectively, which are both within the two (2)-year period (as provided in Sections 204(C)[32] and 229 of the NIRC of 1997, as amended) from the time the tax was collected through garnishment on 15 May 2014.[33]

Thus, the garnished amount must also be refunded to petitioner for having been erroneously or illegally collected.

However, I find no merit as to petitioner's plea to be awarded 20% interest *per annum* from the time of garnishment until payment.

In *Banco de Oro, et al. v. Republic of the Philippines, et al.*[34], the Supreme Court ruled:

> ...
> Petitioners also urge us to hold respondents liable for 6% legal interest reckoned from October 19, 2011 until they fully pay the amount corresponding to the 20% final withholding tax.
>
> This Court has previously granted interest in cases where patent arbitrariness on the part of the revenue authorities has been shown, or where the collection of tax was illegal.
>
> In *Philex Mining Corp. v. Commissioner of Internal Revenue*:
>
> > **[T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly**

---

30 Exhibits "P-3" to "P-3-g", Division Docket, Volume II, pp. 465-479.

31 Id., Volume I, pp. 1-20.

32 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

...

(C) *Credit or refund taxes erroneously or illegally received or penalties imposed without authority*, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

...

33 Exhibit "R-11.5", BIR Records, pp. 106-108.

34 G.R. No. 198756, 16 August 2016; Citations omitted, italics in the original text and emphasis supplied.

> **and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached.** ***Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.***
>
> ...

In this case, I do not see that respondent's garnishment of petitioner's bank account was attended by arbitrariness as it can be said that the former simply followed through on his conclusion that the subject assessments against petitioner are already considered final, executory and demandable. Consequently, the amount of ₱51,880.77 previously garnished from petitioner's bank account must be refunded to it without interest.

In fine, it must be borne in mind that no one, not even the State, should enrich oneself at the expense of another. As aptly held by the Supreme Court in *Filinvest Development Corporation v. Commissioner of Internal Revenue, et al.*[35]:

> ...
> That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. **This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty.** The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.
>
> ...

Lastly, I wish to emphasize that the suspension of the application of procedural rules must remain as the exception to the well-settled principle that an appeal within the statutory period is a jurisdictional requirement. It is only upon strong considerations of substantive justice manifest in a party's case, as herein, that courts may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.

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[35] G.R. No. 146941, 09 August 2007; Citation omitted, italics in the original text and emphasis supplied.

In sum, I vote to **PARTIALLY GRANT** petitioner Milestone Holdings Corporation's Petition for Review filed on 20 February 2020, specifically: (1) to **CANCEL** the Warrant of Distraint and/or Levy No. 12-1632-13 issued against it in the amounts of ₱3,455,640.18 and ₱5,184,518.46, representing deficiency Value-Added Tax and Income Tax, respectively, for taxable year 2007; and, (2) to **REFUND** to petitioner the previously garnished amount of ₱51,880.77 without interest.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice