Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

JOWELLES AUTOPARTS, INC., Petitioner,	**CTA EB NO. 1594** (CTA Case No. 9333)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
BUREAU OF INTERNAL REVENUE, REPRESENTED BY THE REGIONAL DIRECTOR, REVENUE DISTRICT 15, Respondent.	Promulgated: APR 02 2018 2:18 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Resolution[2]

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[1] Sec. 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 Division 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;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

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dated September 26, 2016, rendered by the Third Division of this Court in CTA Case No. 9333, and Resolution[3] dated January 11, 2017.

The Third Division of this Court dismissed petitioner Jowelles Autoparts, Inc.'s (JAI) petition praying for the cancellation of respondent Commissioner of Internal Revenue's (CIR) warrant of distraint and/or levy and garnishment.

Petitioner assails both the aforesaid Resolutions, the pertinent portions of which, respectively, read as follows:

Resolution dated September 26, 2016:

"Thus, considering that the Court lacks jurisdiction to act upon the instant Petition for Review filed beyond the reglementary period, it follows that the Court cannot as well rule on petitioner's Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.

***WHEREFORE**, the instant Petition for Review filed on April 15, 2016, is hereby **DISMISSED**, on jurisdictional ground.*

***SO ORDERED**."*

Resolution dated January 11, 2017:

"Significantly, petitioner itself admits that it did not file its Petition for Review within the 30-day prescriptive period on the belief that the action to declare the subject WDL is imprescriptible. To be sure, petitioner's belief is of no moment by virtue of the express provision of the law on the matter.

***WHEREFORE**, the Motion for Reconsideration filed on October 14, 2016, is hereby **DENIED**, for lack of merit.*

***SO ORDERED**."*

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[2] En Banc Docket, pp. 24-34.
[3] En Banc Docket, pp. 39-40.

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The pertinent antecedent facts as narrated by the Court in Division in its Resolution dated September 26, 2016 are undisputed, to wit:

> *On November 10, 2014, petitioner received a copy of the Preliminary Assessment Notice (PAN) dated November 8, 2014, to which it filed a protest on November 23, 2014.*
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> *On November 27, 2014, petitioner received a Formal Letter of Demand (FLD) dated November 26, 2014, finding it liable for deficiency Income Tax (IT) and Value-Added Tax (VAT) in the total amount of P1,019,457.60, inclusive of interest and surcharge. On December 16, 2014, petitioner protested the FLD.*
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> *On March 25, 2015, petitioner received a letter dated March 3, 2015 from OIC-Regional Director Marina C. De Guzman, reiterating the assessment and demand for payment of its 2010 tax liabilities.*
>
> *On April 1, 2015, petitioner filed a Legal Petition Notice dated March 28, 2015, inquiring if respondent's letter dated March 3, 2015 was his final decision on the disputed assessments.*
>
> *On June 30, 2015, petitioner received a letter dated June 29, 2015 from respondent's Revenue District Officer (RDO) Salvador V.R. Lasala, informing it that the assessment was already for collection. Petitioner questioned the propriety of the collection in its Legal Petition Notice filed on July 6, 2015.*
>
> *On July 23, 2015, petitioner received a Warrant of Distraint and/or Levy (WDL) No. 15-17-003, which it also questioned in its Legal Petition Notice filed on July 24, 2015.*
>
> *On August 4, 2015, petitioner received a letter dated July 24, 2015 from OIC Regional Director Marina C. De Guzman, stating that her letter dated March 3, 2015 was the Final Decision on the Disputed Assessment (FDDA).*
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> *On August 12, 2015, petitioner filed a Legal Petition Notice/Motion for Reconsideration dated August 10, 2015 assailing the letter dated July 24, 2015. This incident according to petitioner is still pending.*
>
> *On August 25, 2015, OIC-Regional Director Marina C. De Guzman issued a letter to petitioner affirming the validity of the WDL No. 15-17-003.*

On February 16, 2016, respondent's OIC - Asst. Regional Director Jose Eric C. Furia, issued a Warrant of Garnishment against petitioner's account in the Bank of the Philippine Islands (BPI).

Petitioner moved to lift the cited Warrant of Garnishment but the same was denied in a letter11 dated March 10, 2016, issued by Regional Director Arnel SO. Guballa.

On March 28, 2016, petitioner asked for a reconsideration of the letter dated March 10, 2016. It is yet to receive a reply to its plea for reconsideration.

Hence, the instant Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction filed on April 15, 2016, xxx.

On September 26, 2016, the Court in Division dismissed petitioner's petition on jurisdictional ground. Subsequently, on January 11, 2017 the Court in Division denied petitioner's Motion for Reconsideration of the Resolution dated September 26, 2016. Hence, the present petition was filed.

On March 17, 2017, respondent CIR was directed to file a Comment on the petition. Respondent CIR failed to file a Comment. Thereafter, on June 2, 2017 the petition was given due course and the parties were directed to submit their respective memoranda.

On September 11, 2017, the petition was submitted for decision after the parties submitted their respective memoranda.

Petitioner raises the following issues and assigns the following errors committed by the Court in Division, to wit:

"I. WHETHER OR NOT THE PETITION FOR REVIEW DATED 14 APRIL 2016 WAS FILED BEYOND THE REGLEMENTARY PERIOD

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II. WHETHER OR NOT THE WARRANTS OF GARNISHMENT AND/OR LEVY AND GARNISHMENT ISSUED BY RESPONDENT IS INVALID OR PREMATURE."

Petitioner argues that the petition was filed within the reglementary period because an action to declare the warrant of distraint and/or levy as void is imprescriptible. Petitioner claims that warrant of distraint and /or levy was issued before the lapse of the thirty (30) day period to move or request for reconsideration before the office of the CIR. Thus, petitioner insists that the warrant of distraint and /or levy was void and since an action to declare the same as void is akin to declaration of contract's nullity, reconveyance of property on void contracts, and void judgments, it is imprescriptible.

We resolve to deny the petition.

The petition is bereft of merit; the arguments propounded by petitioner are flawed and has no leg to stand on.

An action to declare warrant of distraint and /or levy as void is neither imprescriptible nor akin to action for declaration of contract's nullity; reconveyance of property on void contracts, and void judgments.

The power and authority of this Court to act on petitions for the annulment of distraint orders by the CIR may not be denied[4] and an appeal to this Court may be exercised only in the manner and in accordance with the provisions of the law[5]. The alleged premature issuance of warrants is of no moment; it is not imprescriptible. Appeal must be made within the period fixed by law. The thirty (30) day period to appeal before this Court in Division is reckoned from petitioner's receipt of the WDL No. 15-17-003 on July 23, 2015. Hence, petitioner had until August 22, 2015. The

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[4] Pantoja vs. David, G.R. No. L-10765 February 28, 1961 (111 Phil. 197).
[5] Commissioner on Internal Revenue v. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11,2010.

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petition before the Court in Division was filed on April 15, 2016. Thus, petitioner failed to comply with the prescriptive period.

We find that the Court in Division correctly ruled that the petition praying for the cancellation of the Warrants of Distraint and/or Levy No. 15-17-003 and garnishment issued by the CIR, is filed out of time, to wit:

> *The authority of the CTA to rule upon the validity of a WDL issued by respondent is expressly provided in the second part of Section 7 (1) (a) and (b) of RA 1125, as amended, which states:*
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> > *Section 7. Jurisdiction. - The CTA shall exercise:*
> >
> > *(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:*
> >
> > *(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or* ***other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue****; xxx (Emphasis supplied)*
>
> *The case Philippine Journalist, Inc. vs. Commissioner of Internal Revenue (Philippine Journalist), provided a clearer lens on the matter as the Supreme Court categorically ruled that the CTA has jurisdiction to resolve controversies involving the validity of the issuance of a WDL as it is among the "other matters" arising under the NIRC of 1997, as amended, thus:*
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> > *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. (Emphasis supplied)*

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Evident from the foregoing, that the CTA has jurisdiction to pass upon the validity of a WDL, conditioned only on the timely filing of a petition for review.

The period for filing an appeal before the CTA is mandated in Section 11 of the RA 1125, as amended, which reads as follows:

> *Section 11. Who may appeal; effect of appeal. - Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein xxx (Emphasis supplied)*

Corollary thereto, Section 3 (a) of Rule 8 of the Revised Rules of the Court of Tax Appeals reads:

> *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 Commissioners 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 within thirty days 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. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes xxx (Emphasis supplied)*

xxx xxx xxx.

Clearly, the instant Petition for Review filed on April 15, 2016 was filed out of time.

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Note that the 30-day period to appeal before the CTA is reckoned from petitioner's receipt of the WDL No. 15-17-003 on July 23, 2015. Hence, petitioner had until August 22, 2015 to seek judicial intervention through a Petition for Review, as the WDL constitutes an act of respondent on "other matters" arising under the NIRC or other laws administered by the BIR, which could be the subject of an appropriate appeal with the CTA. But it took petitioner a no less than 267 days, a period far beyond the 30-day prescriptive period, to challenge the validity of the said WDL before the Court.

Even assuming that the 30-day period to appeal is reckoned from August 25, 2015, when respondent issued a letter to petitioner insisting on the validity of the WDL No. 15-17-003, still the instant Petition for Review was filed out of time on April 15, 2016.

On the issuance of the Warrant of Garnishment against petitioner's BPI account on February 16, 2016, the same is but a follow-up directed towards full implementation of the collection of tax liabilities based on a final and executory assessment. Significantly, both the WDL No. 15-17-003 and the Warrant of Garnishment stem from the same FDDA dated November 26, 2014, finding petitioner liable for deficiency income tax and value-added tax in the total amount of P1,019,457.60. Thus, when petitioner received the WDL No. 15-17-003 on July 23, 2015, its right to appeal before the Court commenced to run and not from receipt of the Warrant of Garnishment on February 16, 2016.

Evidently, the Court in Division no longer has jurisdiction to act on the Petition for Review filed on April 15, 2016 as it was filed out of time.

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Resolutions dated September 26, 2016 and January 11, 2017 promulgated by the Third Division of this Court in CTA Case No. 9333 are **AFFIRMED**. No pronouncement as to costs.

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SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

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