REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB CASE No. 1246 (CTA CASE No. 8257)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
SOUTH ENTERTAINMENT GALLERY, INC., *Respondent.*	Promulgated: JAN 04 2016 11:09 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 3(b),*[1] *Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as*

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[1] SEC. 3. Who may appeal; period to file petition.

> (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.
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amended, of the Decision dated July 09, 2014[2] and the Resolution dated October 22, 2014[3] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated July 09, 2014:

"**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for deficiency Income Tax and VAT for taxable year 2005 is **CANCELLED and SET ASIDE** and respondent is ordered to withdraw the Warrant of Distraint and Levy dated June 22, 2010.

SO ORDERED."

Resolution dated October 22, 2014:

"**WHEREFORE,** finding no reversible error committed by this Court in rendering the assailed Decision, the instant ***Motion for Reconsideration*** is **DENIED** for lack of merit.

SO ORDERED."

The facts of the case as recited by the Second Division in its Decision[4] are as follows:

"Petitioner (respondent herein) is a corporation organized and existing under the laws of the Philippines, with office address at 3/F SM City Pampanga, Brgy. San Jose, San Fernando City, Pampanga and Brgy. Lagundi, Mexico City, Pampanga. It is engaged in the business of operating and

[2] Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Amelia R. Contangco-Manalastas was on leave on the date of promulgation, *En Banc* Docket, pp. 37-50.
[3] Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Contangco-Manalastas, *En Banc* Docket, pp. 51-52.
[4] *Supra* note 2.

conducting Bingo games and other games of chance, among others, pursuant to its contractual relationship with the Philippine Amusement and Gaming Corporation ("PAGCOR"), having been issued the Grant of Authority to conduct bingo games and variants thereof pursuant to Presidential Decree ("PD") 1869.

Respondent (Petitioner herein) is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building, Diliman, Quezon City.

On February 21, 2008, petitioner received a Preliminary Assessment Notice dated February 4, 2008 informing petitioner of its alleged tax deficiencies. Subsequently, it received a Preliminary Collection Letter dated June 10, 2008 collecting the said alleged internal revenue tax liabilities in the total amount of ₱4,067,264.18, to *wit*:

Kind of Tax	Tax Due	Surcharge	Interest	Compromise	Total Amount Due
Income Tax	247,216.00	-	79,521.15	4,000.00	330,737.15
VAT	2,046,399.96	511,735.00	1,119,521.40	20,000.00	3,697,656.36
Withholding	25,077.32	-	13,793.35	-	38,870.67
Total	**₱2,318,693.28**	**₱511,735.00**	**₱1,212,835.90**	**₱24,000.00**	**₱4,067,264.18**

Petitioner replied to the Preliminary Collection Letter in a letter dated June 19, 2008 informing respondent that it already paid the withholding tax deficiency but, with regard to the Income Tax and VAT deficiencies, it maintained its exemption from the payment of any kind and form of taxes pursuant to PAGCOR's exemption under PD 1869. Nevertheless, respondent issued a Warrant of Distraint and/or Levy (WDL) through OIC-Revenue District Officer of South Pampanga on June 22, 2010. This prompted petitioner to request for a withdrawal and cancellation of the WDL in a letter dated September 24, 2010.

On March 25, 2011, petitioner received a letter of even date from OIC-RDO Amador P. Ducut, reiterating the collection of the alleged deficiency Income Tax in the amount of P326,737.15 and deficiency VAT in the amount of P3,697,656.36 for taxable year 2005.

> Hence, petitioner filed the (instant) Petition for Review [With Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction]."

The application for Temporary Restraining Order and/or Writ of Preliminary Injunction was granted.

The issue raised before the Division is whether or not a valid Formal Assessment Notice (FAN) had been issued by the CIR.

The Second Division ruled in favor of South Entertainment Gallery, Inc. (SEGI) and held that CIR failed to prove that the FAN was indeed received by South Entertainment.

CIR's Motion for Reconsideration was denied for lack of merit, hence, this Petition.

In her Petition for Review, CIR mainly argues that this Court has no jurisdiction to entertain the case as the Petition for Review filed before the Division was filed out of time. Applying the mandatory thirty (30) day period to file a Petition for Review from the decision or ruling of the CIR, reckoning the said period, at the very latest, from service of the WDL on June 22, 2010, the said Petition was filed on March 31, 2011, or nine (9) months from the said reckoning date. Moreover, CIR has sufficiently proven service of FAN to SEGI by presenting the registry return card received by SM Pampanga's employee Mr. Brian David, the delivery book, Certification by the letter carrier Postman II Emelito Victoria, Registry receipt and records of registered mail.

After carefully examining the records of the case, this Court has no reason to deviate from the findings in the assailed Decision, and concludes that CIR has failed to prove service of FAN to SEGI.

CIR argues that upon mere denial of SEGI that it received the FAN, she has sufficiently proven service thereof through evidence presented before the Division.

On the matter of service of a tax assessment, The ruling of the Supreme Court in *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[5] is instructive, *viz*:

> "Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). x x x
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> x x x. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card <u>which would have been signed by the Petitioner or its authorized representative.</u> And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts.** This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:
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> > "While we have held that an assessment is made when sent within the prescribed period, even if received by the

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[5] G.R. No. 150764, August 7, 2006

> taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayers intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue officers, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).
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> x x x."

(Bold in the original; Underlining supplied.)

In the case of *People of the Philippines v. Joseph Typingco*,[6] this Court ruled:

> "In this regard, the Court in Division made the following observation to which the Court *En Banc* agrees, thus:
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> 'It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. . . .
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> Jurisprudence likewise dictates that for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the

[6] CTA EB Criminal Case No. 021 (CTA Criminal Case No. O-114), September 27, 2013.

> proper space and then affix legibly his own signature below it.' Also, it is a rule that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.
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> Again, the prosecution failed to demonstrate that the registry receipt had been actually served upon the accused or upon his duly authorized agent. The bare testimony of Teresita Maglunog, the BIR document locator and the registry receipt are utterly insufficient to prove that the assessment notices and demand letters were received by the accused. Such failure of the prosecution is a fatal blow to its case.'" (Underlining Supplied.)

Since SEGI denied receipt of FAN, it is essential for CIR to prove the fact of mailing through the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by SEGI's authorized representative or a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts that the mail matter was served upon SEGI's authorized representative.

It is not enough that the registry return card was presented by the CIR. Such should have been signed by SEGI's authorized representative. A perusal of the records shows that the registry return card[7] was signed by Mr. Brian David, who is not authorized by SEGI to receive the mail matter on its behalf. Even the testimony[8] of Mr. Brian David only proved that he received the mail matters for the tenants of SM City Pampanga but does not prove that indeed SEGI received the FAN.

Neither did the Certification[9] prove valid service of FAN since the Certification only states that the letter sent by BIR was received by Mr. Brian David, who has no connection in

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[7] Exhibit "27," Division Docket, p. 698.
[8] Transcript of Stenographic Notes (TSN) of January 31, 2013 hearing, pp. 10-11.
[9] Exhibit "25," Division Docket, p. 696.

any manner with SEGI. The failure of the CIR to prove receipt of the assessment by SEGI leads to the conclusion that no assessment was issued. Consequently, the government's right to issue a WDL has no basis to stand on.

The case of *Pacific Plans, Inc. vs. Commissioner of Internal Revenue*[10] is relevant in this manner:

> "Respondent argues that the Court has no jurisdiction to take cognizance of the instant case considering that petitioner received the Final Notice Before Seizure on July 19, 2005, and following the ruling in *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, 361 SCRA 71 ("Isabela case"), petitioner has 30 days from receipt of said Final Notice Before Seizure, or until July 16, 2005, within which to file the instant petition. However, petitioner filed the instant petition only on October 30, 2006, hence the Court has no jurisdiction to entertain said petition.
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> Respondent's contention is devoid of merit.
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> The Isabela case is not applicable to the instant case as the factual scenario in the Isabela case is totally different from the factual setting in the present case. In the Isabela case, the Final Notice Before Seizure was considered by the Supreme Court as the final act of the CIR regarding the taxpayer's request for reconsideration since it was the only response received by the taxpayer after it filed its request for reconsideration. Whereas, in the present case <u>the Final Notice Before Seizure dated June 16, 2005, which was received by petitioner on July 19, 2005, was not the last response received by petitioner from the respondent.</u> After petitioner submitted a letter response to the Final Notice Before Seizure on July 29, 2005, petitioner received on October 10, 2005 a Collection Letter dated September 20, 2005 from the BIR, to which petitioner submitted a letter response to the BIR on October 26, 2005, requesting for a waiver of said civil penalties. Subsequently, pending decision of the BIR on its Application for Abatement, on March 17, 2006, petitioner received Assessment Notices Nos.

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[10] CTA Case No. 7537, February 09, 2009.

QA-06-000122 and QA-06-000123, both issued on January 20, 2006, imposing surcharge, interest and penalties in the amounts of P275,964.35 and P259,138.13 for late payment of the creditable withholding taxes for the months of March and April 2005, respectively. The said Assessment Notices state that should petitioner disagree with the assessments, it should submit a letter of protest. Hence, on April 4, 2006, petitioner filed a letter dated March 29, 2006, protesting the assessment contained in Assessment Notices Nos. QA-06-000122 and QA-06-000123, which respondent failed to act.

In the light of the foregoing events obtaining after the issuance of the Final Notice Before Seizure, it is clear that in the instant case, the Final Notice Before Seizure can not be considered the final act of respondent, from which the counting of the statutory period to appeal to this Court must be reckoned. While it is true that as a rule the warrant of distraint and levy is proof of the finality of the assessment and renders hopeless a request for reconsideration, being tantamount to an outright denial thereof and makes the said request deemed rejected, the special circumstance in this case prevents the application of this accepted doctrine (*Commissioner of Internal Revenue vs. Algue, Inc.*, 158 SCRA 12-13). xxx"

On the issue of jurisdiction, the WDL, which was served upon SEGI on June 22, 2010, was not the last response received by SEGI from the CIR. After SEGI requested a withdrawal and cancellation of WDL in a letter dated September 24, 2010, SEGI received a letter on March 25, 2011 from OIC-RDO Amador P. Ducut reiterating the collection.

In the case of *Commissioner of Internal Revenue vs. Union Shipping Corporation and the Court of Tax Appeals,*[11] CIR argues that the period to appeal before this Court commenced to run from receipt of WDL on November 25, 1976, so that on January 10, 1979 when Union Shipping Corporation sought redress, this Court was already bereft of jurisdiction. The Supreme Court ruled in this manner:

[11] G.R. No. L-66160, May 21, 1990.

"Specifically, this Court ruled:

> . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. <u>On the basis of this statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues</u>. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. <u>This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court.</u> Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action. (Surigao Electric Co., Inc. v. C.T.A., 57 SCRA 523, 528, [1974]).

> There appears to be no dispute that petitioner did not rule on private respondent's motion for reconsideration but contrary to the above ruling of this Court, left private respondent in the dark as to which action of the Commissioner is the decision appealable to the Court of Tax Appeals. xxx" (Underlining Supplied.)

In the light of the foregoing events obtaining after the issuance of the WDL, it is clear that in the instant case, the WDL cannot be considered the final act of CIR, from which the counting of the statutory period to appeal to this Court must be reckoned. While it is true that, as a rule, the warrant of distraint and levy is proof of the finality of the assessment and renders hopeless a request for reconsideration, being tantamount to an outright denial thereof and makes the said request deemed rejected, the special circumstance in this case prevents the application of this accepted doctrine.[12] The fact is that the FAN was not received by SEGI, hence, there is nothing for SEGI to protest for reconsideration or reinvestigation.

In several cases cited by CIR in her Petition, the assessments therein were not disputed, and then thereafter, upon collection, only did the taxpayers appealed before this Court. That is not the case herein. There was nothing taken into account before the WDL was issued. Suffice it to say that there can be no final, executory and demandable assessment where there is no showing that the subject FAN was properly and duly served upon the taxpayer concerned,[13] the WDL therefore, is based on erroneous or void determination.

In a similar case of *Commissioner of Internal Revenue vs. Transfield Philippines, Inc.,*[14] Transfield filed a Petition for Review on October 10, 2008, questioning the validity of the WDL issued on September 08, 2008. CIR claims that this Court erred in assuming jurisdiction over the case since the Petition for Review was filed out of time. This Court *En Banc* ruled:

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[12] Commissioner of Internal Revenue vs. Algue, Inc., 158 SCRA 13.
[13] *Supra,* note 6.
[14] CTA EB No. 907 (CTA Case No. 7842), August 05, 2013.

"The question arising from the issue is whether the subject WDAL was legally/validly issued by CIR considering that Transfield claims immunity from payment of the alleged tax liability, having availed of tax amnesty under Republic Act No. 9480.

Petitioner's Petition for Review is bereft of merit.

Suffice it to say that Transfield is not assailing the correctness or the validity of assessment as contained in the Final Assessment Notices in the total amount of P563,168,996.70 issued against it by the CIR; and that the finality of the assessment against Transfield does not preclude them from questioning the validity of the right of the CIR to exact payment of the alleged tax liabilities for the taxable year 2002, by way of the issuance and implementation of the WDAL dated September 8, 2008.

In the instant case, <u>the Court has jurisdiction to rule on the petition when the CIR issues WDAL's on erroneous and void determinations. This is based on the fact that the instant case is not an appeal of the disputed assessment which is subject to a reglementary period, but it is a case to determine whether the issuance of the WDAL's are proper</u>.

<u>Further, the issue to be addressed is not the timeliness of the protest of the assessment issued against it, but rather, whether the CIR may validly collect taxes from Transfield by way of the WDAL</u> despite of Transfield having availed of the tax amnesty under RA 9480." (Underlining Supplied.)

Applying the provision of Section 11 of Republic Act 1125,[15] as amended by Republic Act 9282, SEGI has 30 days from March 25, 2011, or until April 24, 2011, within which to appeal to this Court. Considering that the Petition for Review was filed on March 31, 2011, clearly, the petition was filed on time. Thus, the Court has jurisdiction over the petition.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the

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

Decision and the Resolution, dated July 09, 2014 and October 22, 2014, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SOUTH GALLERY ENTERTAINMENT GALLERY, INC.,
Respondent.

CTA EB No. 1246
(CTA CASE No. 8257)

Present:

DEL ROSARIO, *PJ,*
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 04 2016 11:09 a.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With all due respect, I hesitate to agree with the *ponencia* in denying the Petition for Review. The present petition should be granted and the issuance of the Warrant of Distraint and Levy (WDL) be accordingly upheld as the respondent's original Petition for Review filed with the Court in Division was filed out of time.

It is settled that the Court of Tax Appeals (CTA) has jurisdiction to rule upon the validity of a WDL as its issuance by the Commissioner of Internal Revenue (CIR) falls under the second part of Section 7(1) (a) and (b) of RA 1125, as amended, which states:

"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*)

In *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue (Philippine Journalist),*[1] 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 National Internal Revenue Code (NIRC) of 1997, as amended, *viz:*

"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*)

From the foregoing, it is evident that while this Court has jurisdiction to pass upon the validity of a WDL, the corresponding petition assailing such WDL should be filed within the period provided by law.

The period for filing an appeal before the CTA is provided under Section 11 of the Republic Act No. 1125,[2] as amended which states:

"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

[1] G.R. No. 162852, December 16, 2004.
[2] An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, and Republic Act No. 9503.

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:

"RULE 8
PROCEDURE IN CIVIL CASES

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*)

In this case, the following are the pertinent dates in determining the timeliness of the Petition for Review:

Date Filed	Action
February 21, 2008	South Entertainment Gallery Inc. (SEGI) received a Preliminary Assessment Notice (PAN).[3]
June 10, 2008	Date of Preliminary Collection Letter (PCL)[4]
June 20, 2008	CIR received a Letter dated June 19, 2008[5] from SEGI in reply to the PCL contending that it is exempted from tax.
June 22, 2010	SEGI received the WDL.[6]
September 29, 2010	CIR received a Letter dated September 24, 2010[7]

ON

[3] Exhibit "C", *CTA Division Docket*, pp. 440-441.
[4] Exhibit "D", *CTA Division Docket*, p. 442.
[5] Exhibit "J", *CTA Division Docket*, pp. 479-480.
[6] Exhibit "H", *CTA Division Docket*, p. 471.

	from SEGI requesting for the withdrawal and cancellation of the WDL.
March 3, 2011	SEGI received a Memorandum dated February 3, 2011[8] (approved by Revenue Director Romulo L. Aguila, Jr.) from the CIR stating that the WDL is proper, just and legal.
March 25, 2011	SEGI received a Letter[9] from OIC-RDO Amador P. Ducut reiterating the collection of the deficiency income tax and the deficiency VAT.
March 31, 2011	SEGI filed Petition for Review.

From the foregoing, I disagree with the *ponencia* that the thirty (30)-day period within which to file a Petition for Review with the CTA should be reckoned from March 25, 2011 or the date when respondent received a Letter from OIC-RDO Amador P. Ducut reiterating the collection of deficiency income tax and deficiency VAT for the taxable year 2005. **Instead, the aforestated 30-day period should be reckoned from its receipt of the WDL on June 22, 2010 or until July 22, 2010** as the WDL constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue which, pursuant to the doctrine laid down in *Philippine Journalist, supra*, may be the subject of an appropriate appeal with the CTA. **Yet, it took respondent a period of 99 days to question the issuance of the WDL before the BIR and 282 days before it appealed to this Court**. As the Petition for Review before the Second Division Court was unquestionably filed out of time, this Court has no jurisdiction to act upon the case.

I am not unaware that case law is replete with jurisprudential pronouncements respecting the principle of exhaustion of administrative remedies. **Nonetheless, such principle does not in any way justify a modification of the jurisdictional period of appeal as provided by law. To uphold the view that a subsequent letter of the BIR reiterating the validity of the WDL which, by operation of law has already become final, would result in the mischievous consequence of a revenue official's responsibility to reply to a taxpayer's communication as constitutive of an extension of the reglementary period of appeal. The scenario is abhorrent as it is irregular.** The right to appeal is not a constitutional right but merely a statutory right, which may not be casually ignored by a revenue official:

[7] Exhibit "I", *CTA Division Docket*, pp. 472-478.
[8] Exhibit "E-1", *CTA Division Docket*, pp. 444-449.
[9] Exhibit "E", *CTA Division Docket*, p. 443.

> "The right to appeal is not a natural right. It is also not 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."[10] (*Emphasis supplied*)

Considering that the WDL has attained finality and in view of this Court's lack of jurisdiction to act upon the Petition for Review filed beyond the reglementary period, I **VOTE** to **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1246, **REVERSE** and **SET ASIDE** the Decision and Resolution of the CTA Second Division dated July 9, 2014 and October 22, 2014, respectively, and **UPHOLD** the issuance of the Warrant of Distraint and Levy for the collection of deficiency income tax, deficiency expanded withholding tax, and deficiency value-added tax for taxable year 2005.

ROMAN G. DEL ROSARIO
Presiding Justice

[10] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.