REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

XPERT AIR SERVICES, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10171

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

MAR 14 2023

4:30 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed under Rule 4, Section 3(a)(1)[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, in relation to Section 7(a)(1)[3] of Republic Act (RA) No. 1125,[4] as amended, praying that judgment be rendered:

a. Declaring the subject assessments as null and void as they were based on an invalid Letter of Authority (LOA);

b. Declaring the Warrant of Distraint and/or Levy (WDL) dated August 29, 2019 as null and void;

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[1] Docket, pp. 6-27.

[2] Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* — (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.

[3] Sec. 7. *Jurisdiction.* — The Court of Tax Appeals 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."

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

c. Reversing and setting aside respondent's Final Decision on Disputed Assessment (FDDA) holding petitioner liable for alleged deficiency internal revenue taxes for the year 2010 in the total amount of ₱20,779,918.29;

d. Declaring as null and void the disputed deficiency assessments for income tax (IT), value-added tax (VAT), and improperly accumulated earnings tax (IAET), inclusive of interests and penalties, for the taxable year (TY) 2010 as contained in the FDDA; and

e. Declaring petitioner as not liable for any deficiency IT, VAT, and IAET for the TY 2010.

THE PARTIES

Petitioner Xpert Air Services, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal business address at No. 7 Ideal Street, Mandaluyong City.[5] It was formed primarily *"to provide foreign airline companies doing business in the Philippines services for its marketing, sales, customer service, reservations ticketing and other airport operations in the Philippines for both passengers and cargo operators."*[6]

Petitioner is also registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-144-056-000.[7]

On the other hand, respondent Commissioner of Internal Revenue (CIR or Commissioner) is the officer duly appointed and empowered by law to act on national internal revenue tax assessments. He holds office on the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

THE FACTS

On August 25, 2011, the BIR – Revenue District Office No. 41 issued LOA No. 041-2011-00000712 (eLA201000064064), authorizing Revenue Officer (RO) Ma. Socorro Concepcion and Group Supervisor (GS) Diodith Sulibit to examine petitioner's

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[5] Par. 9, Petition for Review, Docket Vol. I, p. 8.
[6] Par. 11, *id.*, p. 8; Primary Purpose, Amended Articles of Incorporation, Exhibit P-2-A, Docket Vol. II, p. 593.
[7] Par. 12, *id.*, p. 8; Certificate of Registration, Exhibit P-3, Docket Vol. II, p. 599.
[8] Par. 10, *id.*, p. 8.

books of accounts and other accounting records for all internal revenue taxes from January 1, 2010 to December 31, 2010. On an even date, petitioner received the said LOA.[9]

On September 19, 2013, the BIR issued the Notice of Informal Conference (NIC) against petitioner.[10]

On December 3, 2013, petitioner received a Preliminary Assessment Notice (PAN) dated December 9, 2013, wherein it was given fifteen (15) days from receipt to file a reply.[11]

On January 3, 2014, petitioner submitted a *Waiver of the Defense of Prescription under the Statute of Limitations*, waiving the defense of prescription under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, until April 15, 2016.[12]

On January 6, 2014, petitioner received a Formal Letter of Demand with attached Details of Discrepancies and Assessment Notices (FLD/FAN), giving it thirty (30) days from receipt, or until February 5, 2014, to file a protest letter.[13]

On January 7, 2014, petitioner filed a Position Paper against the PAN and requested consideration on the deficiency assessments on the ground that the same is void for lack of factual and legal bases through a Letter dated January 3, 2014.[14]

On February 5, 2014, petitioner filed a Formal Protest against the FLD.[15]

On May 10, 2019, petitioner received the FDDA of even date,[16] with attached Details of Discrepancy and signed by Regional Director Romulo L. Aguila, Jr. of Revenue Region No. 7, assessing it of deficiency IT, VAT, and IAET and compromise penalty in the aggregate amount of ₱20,779,918.29, inclusive of increments, for the TY 2010, broken down as follows:

[9] Par. 13, Petition for Review, Docket Vol. I, pp. 8 to 9; Exhibit P-20, Docket, p. 634.
[10] Par. 14, *id.*
[11] Par. 15, *id.*, Exhibit P-22, Docket, pp. 643-646.
[12] Par. 16, *id.*, Exhibit P-23, Docket, p. 647.
[13] Par. 17, *id.*, Exhibit P-25, Docket, pp. 652-656.
[14] Par. 18, *id.*, Exhibit P-24, Docket, pp. 648-651.
[15] Par. 19, *id.*, Exhibit P-26, Docket, pp. 661-675.
[16] Par. 20, *id.*, Exhibit P-27, Docket, pp. 676-681.

Tax Type	Basic Tax	Surcharge	Interest	Compromise	Total
IT	₱6,759,705.99	₱ -	₱10,178,450.44	₱ -	₱16,938,156.43
VAT	1,482,890.47	-	2,297,870.83	-	3,780,761.30
IAET	21,112.90	5,278.23	28,609.43	6,000.00	61,000.56
TOTAL	**₱8,263,709.36**	**₱ 5,278.23**	**₱12,504,930.70**	**₱ 6,000.00**	**₱20,779,918.29**

On June 6, 2019, petitioner filed its appeal to respondent, praying that the deficiency tax assessments under the FDDA be withdrawn and cancelled for failure to observe the due process requirement under Section 3.1 of Revenue Regulation (RR) No. 12-99.[17]

On August 29, 2019, pending action by respondent of petitioner's administrative appeal, the BIR issued and served to petitioner a WDL with No. RR7B-WDL-2019-08-23-00014, signed by the *Chief of Collection Division*, Ceferina M. Ong, enforcing the collection of deficiency tax assessments against petitioner under the FDDA.[18]

On September 25, 2019, prompted by the service of the WDL, petitioner filed the instant *Petition for Review.*[19]

In his *Answer*[20] filed within the extension period given, respondent interposed by way of Special and Affirmative Defenses, the following:

1. The Honorable Court has no jurisdiction over the case of petitioner;

2. The allegation of petitioner regarding the requirement for validation of the LOA is misplaced; and

3. There is factual and legal basis to support the assessments made against petitioner.

During the Pre-Trial Conference on February 13, 2020, the parties were ordered to appear for mediation proceedings before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on March 23, 2020.[21]

[17] Par. 21, *id.*, Exhibit P-28, Docket, pp. 682-684.
[18] Par. 22, *id.*, Exhibit P-29, Docket, p. 685.
[19] See Note 1, *Supra.*
[20] Docket, pp. 106-111.
[21] Minutes of the Hearing, Docket, p. 238.

On September 10, 2020, the Court received the "*No Agreement to Mediate*"[22] filed by the PMC-CTA.

The instant case was set anew for pre-trial on November 4, 2020,[23] where only the counsel for petitioner appeared. Respondent, despite due notice, failed to appear. Upon the instance of petitioner, the Court declared respondent in default and allowed petitioner to present evidence *ex parte.*[24]

Petitioner presented its Accounting Supervisor, Ms. Leny P. Perlas, and the Court-commissioned Independent Certified Public Accountant (ICPA), Ms. Sonia D. Sogovia, as witnesses.

Ms. Leny P. Perlas testified by way of her Judicial Affidavit[25] as follows:

> As petitioner's Accounting Supervisor, she is responsible, among others, for supervising petitioner's compliance with pertinent laws, rules, and regulations and payment of taxes, licenses, and fees. She also supervises the preparation and documentation of petitioner's business transactions relative to auditing and accounting its books of accounts.
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> She is familiar with the instant case as she was the one who coordinated with the ROs during their examination of petitioner's books of accounts and other accounting records for TY 2010, which was conducted pursuant to LOA No. 041-2011-00000712. She initiated, handled, and submitted for review and approval by their Chief Finance Officer petitioner's protest against the deficiency tax assessments that the BIR subsequently issued. She also prepared and caused the preparation of, as well as supervised, the finalization and collation of all the documents, pleadings, and evidence relative to petitioner's protest against the assessments before the BIR.
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> Petitioner received the LOA on August 25, 2011, and the Notice of Informal Conference on September 19, 2013. Thereafter, on December 3, 2013, petitioner received the PAN dated December 9, 2013.
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> Upon receipt of the PAN, petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitations*, extending the period to assess until April 15, 2016. The said *Waiver* was submitted to the BIR on January 3, 2014.
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> On January 7, 2014, petitioner filed its *Position Paper* against the PAN. But before filing its Position Paper, or on January 6, 2014, petitioner received the FLD/FAN, wherein petitioner was given thirty (30) days from receipt to file a protest.
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> On February 6, 2014, petitioner filed its Formal Protest against the FLD/FAN. Thereafter, or on May 10, 2019, petitioner received the FDDA issued by Regional Director Romulo L. Aguila, Jr. of Revenue Region No. 7. Under the FDDA, petitioner was found liable for deficiency IT, VAT, IAET, and compromise penalty in the aggregate amount of Php20,779,918.29, inclusive of increments, for TY 2010.
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> Petitioner then appealed the FDDA before the Office of the CIR on June 6, 2019, praying for the cancellation and withdrawal of the deficiency tax assessments issued against it for lack of legal and factual basis. However, pending its appeal

[22] Docket, p. 246.
[23] Resolution, Docket, p. 251.
[24] Order, Docket, p. 256.
[25] Exhibit P-32, Docket, pp. 118-136.

before the CIR, the BIR Collection Division issued the WDL to enforce the collection of the alleged deficiency tax assessments against petitioner for TY 2010.

Ms. Sonia D. Sogovia also testified by way of her Judicial Affidavit[26] as follows:

> On January 18, 2021, she appeared before the Court. She was commissioned to perform the duties and responsibilities of an ICPA under Rule 32 of the Rules of Court in relation to Rule 13 of the Revised Rules of the Court of Tax Appeals.
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> They examined the supporting documents relative to the instant *petition* in accordance with the instructions given by the Court during the commissioning held on January 18, 2021, and in accordance with existing standards and practices applicable to accounting procedures and engagements and tax rules and regulations in the Philippines. After examining the documents and under the order of the Court, they submitted the ICPA Report on March 19, 2021, consisting of two (2) binders with the corresponding USB containing the ICPA Report and all supporting documents.
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> Based on the results of the procedures they performed, they recommend that the basic tax assessments of the BIR for TY 2010 amounting to ₱8,263,709.36 be reduced by ₱4,655,250.62 where the remaining basic tax assessments will be ₱3,608,458.74, exclusive of interest and compromise penalties.

Petitioner formally offered its documentary evidence *via* a *Formal Offer of Evidence* filed on February 9, 2022,[27] which the Court partly admitted in a Resolution dated April 27, 2022.[28] In the same Resolution, petitioner was given thirty (30) days from notice to submit its memorandum.

With the filing of petitioner's Memorandum on May 25, 2022,[29] the instant case was submitted for decision on May 31, 2022.[30]

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues[31] for the resolution of the Court:

A. WHETHER THE LETTER OF AUTHORITY ISSUED IN THE PRESENT CASE WHICH COVERS THE PERIOD 01 JANUARY 2010 TO 31 DECEMBER 2010 IS NULL AND VOID; and

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[26] Exhibit P-58, Docket, pp. 314-344.
[27] Docket, pp. 579-588.
[28] Docket, pp. 730-731.
[29] Docket, pp. 732-761.
[30] Resolution, Docket, p.764.
[31] Issues to be Resolved, Petitioner's Pre-Trial Brief, Docket, p. 226.

B. WHETHER PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, IMPROPERLY ACCUMULATED EARNINGS TAX, AND COMPROMISE PENALTY FOR THE PERIOD COVERING 01 JANUARY 2010 TO 31 DECEMBER 2010.

Petitioner's Arguments:

At the outset, petitioner submits that the Court has jurisdiction over the instant *petition* citing Section 7 of RA No. 1125, as amended, and the case of *Commissioner of Internal Revenue v. Abundance Providers and Entrepreneurs*,[32] where the Court's *En Banc* allegedly ruled that "*once a warrant of distraint/levy has been issued similar to what happened in the Algue case, this Court can readily take cognizance of the appeal assailing the warrant by virtue of the above-quoted ruling in the Philippine Journalist case.*"

Allegedly, petitioner received the WDL on August 29, 2019. Since the WDL constitutes an act of respondent on "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR, the WDL is appealable to the Court of Tax Appeals within thirty (30) days from receipt thereof. As such, its *Petition for Review* was timely filed on September 25, 2019.

The petitioner claims that the deficiency assessments issued against it are null and void as the LOA authorizing the examination of its books of accounts for TY 2010 had ceased to be valid.

According to petitioner, under the *BIR's General Audit Procedures and Documentation*, the RO is allowed only 120 days from the date of receipt of the LOA by the taxpayer to conduct the audit and submit the required report of investigation. If the RO is unable to submit the final report of investigation within the 120-day period, he/she must then submit a Progress Report to the head office and surrender the LOA for revalidation.

In the instant case, petitioner received the LOA dated August 25, 2011 on the same date. Thus, the RO named therein had 120 days from August 25, 2011, or until December 23, 2011, to conduct the audit and submit the Progress Report—however, RO Ma. Socorro Concepcion should have submitted a

[32] CTA *EB* No. 999 (CTA Case No. 8040), February 4, 2015.

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Progress Report and surrendered the LOA for revalidation and the issuance of a new LOA. Hence, invoking this Court's ruling in *GS MTE Gains Corporation v. Commissioner of Internal Revenue*, petitioner asserts that the LOA became invalid upon the expiration of the 120-day period, and the resulting assessment or examination is a nullity.

Nevertheless, petitioner asserts that the deficiency tax assessments should be cancelled and set aside for lack of legal and factual basis.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

The Court has jurisdiction over the instant case.

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) and (2) of RA No. 1125,[33] as amended by RA No. 9282, reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;
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> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (*Boldfacing supplied*)

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

Pertinently, Section 3(a)(1) and (2), Rule 4 of the RRCTA provides that the Court in Division has jurisdiction over *one,* petitioner's decision or inaction involving disputed assessments (first part); and *two,* other matters arising under the NIRC of 1997, as amended (second part), among others.[34]

In relation to the *first* part of Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, and as implemented by Section 3(a)(1) and (2), Rule 4 of the RRCTA, for the decision or inaction of respondent or his duly authorized representative to be raised on appeal before the Court in Division, there must first be a *disputed* assessment.[35] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC of 1997,[36] as amended, which states:

> "SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided,* however, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Corollarily, Section 3 of RR No. 12-99, as amended, implements Section 228 of the NIRC of 1997, as amended, as it lays down a more detailed procedure relative to the issuance and protest of a deficiency tax assessment.

Section 3.1.4 of RR No. 12-99, as amended, in part, provides as follows:

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

[35] See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

[36] Tax Reform Act of 1997.

> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.
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> xxx xxx xxx
>
> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) **appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision**; **or** (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner. (*Emphasis supplied*)

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

Anent the *second part*, the term "other matters" has been ruled to include, but not limited to, a review of the CIR's authority and decision to compromise,[37] a prescription of the CIR's right to collect taxes,[38] and a determination of the validity of a WDL and waiver of the statute of limitations.[39]

In the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue (Philippine Journalists case)*,[40] the Supreme Court explained what constitutes "other matters" over which the CTA has jurisdiction, to wit:

> **The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or**

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[37] *Philippine National Oil Company v. Court of Appeals, et al.*, and *Philippine National Bank v. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.

[38] *Commissioner of Internal Revenue v. Court of Tax appeals Second Division*, G.R. No. 258947, March 29, 2022; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[39] *La Flor Dela Isabela, Inc. c. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021; *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[40] G.R. No. 162852, December 16, 2004.

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

In the case at bar, petitioner received the FDDA signed by Regional Director Romulo L. Aguila, Jr., assessing it for deficiency IT, VAT, IAET, and compromise penalty for TY 2010. Hence, the FDDA was issued by the Commissioner's duly authorized representative. Petitioner then sought reconsideration of the FDDA issued by the Regional Director to herein respondent. However, pending appeal, petitioner received the subject WDL enforcing collection of the alleged deficiency tax assessments based on the FDDA. This prompted petitioner to file the instant *Petition for Review,* questioning the validity/correctness of the deficiency tax assessments.

Parenthetically, in the case of *Light Rail Transit Authority v. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue (LRTA case)*,[41] the Supreme Court clarified thus:

> Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that **if the protest is elevated to the respondent Commissioner of Internal Revenue, "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**" The Final Decision on Disputed Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.
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> **Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances**: the Preliminary Collection Letter, the Final Notice Before Seizure, **<u>the Warrant of Distraint and/or Levy</u>**, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. **Like the Final Decision on**

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

> **Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration <u>all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect</u>.**
>
> *Commissioner of Internal Revenue v. Isabela Cultural Corporation* cannot be made basis to claim that the Final Notice Before Seizure is the final decision on the protest appealable to the Court of Tax Appeals. **When *Isabela* was promulgated in 2001, Section 7 of Republic act No. 1125 had yet to be amended by Republic Act No. 9282 to add inactions of the Commissioner as appealable to the Court of Tax Appeals.** Moreover, this Court had yet to promulgate *Rizal Commercial Banking Corporation* and *Lascona*, where it was clarified that taxpayers have the option to await the decision of the Commissioner in protests of disputed assessments before they file an appeal with the Court of Tax Appeals. In other words, in *Isabela*, the taxpayer still had no choice of awaiting the decision of the Commissioner on its protest. This is why in *Isabela*, this Court considered the Final Notice Before Seizure as the Commissioner's decision on the protest. More so because it was the only response Isabela Cultural Corporation received from the Commissioner after it had filed its protest.
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> Unlike here, where the taxpayer filed an appeal with the Commissioner, no similar appeal was made in *Isabela*. Hence, in *Isabela*, there was no final decision on the appeal by the Commissioner to await, and the Final Notice Before Seizure was correctly deemed the final decision on the protest. To insist that petitioner should have considered the Final Notice Before Seizure or the Warrant of distraint and/or Levy as the decision appealable to the Court of Tax Appeals En Banc is to deprive petitioner of the remedy of awaiting the decision of the Office of the Commissioner of Internal Revenue on its appeal. (*Emphasis supplied*)

Based on the foregoing jurisprudential pronouncement, when the taxpayer files an appeal with the CIR requesting a reconsideration of the FDDA issued by the CIR's duly authorized representative, the taxpayer must await the decision

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of the CIR before filing a petition for review with the CTA to question the validity/correctness of the assessment.

Moreover, the 30 days for filing a petition for review cannot be reckoned from the taxpayer's receipt of the Preliminary Collection Letter, the Final Notice Before Seizure, the **WDL**, and others issued on the premise that "delinquent taxes" exist. As ruled in the LRTA case, like the FDDA, the WDL and other issuances were not "final decisions" on the appeal by the CIR; they remain "tentative" given the pendency of the appeal.

Notably, in this case, petitioner also assails the issuance of the WDL that allegedly emanated from an invalid LOA. One of the reliefs sought by petitioner in the instant case is for the Court to declare the WDL dated August 29, 2019, null and void.

Thus, following the *Philippine Journalists case*, the Court finds that while the subject assessments are still pending appeal with the CIR, and there is no "final decision" yet on the protest, it can still assume jurisdiction over the instant *Petition for Review* to determine the propriety of the issuance of the WDL based on the "other matters" clause of Section 7(a)(1) and (2) of RA No. 1125, as amended.[42]

It bears reiterating that the term "other matters" over which the CTA has exclusive appellate jurisdiction has been ruled to include a determination of the validity of a WDL.[43]

Hence, the Court has jurisdiction over the present case which was timely filed within 30 days from receipt of the challenged WDL.

We shall now determine the validity of the WDL dated August 29, 2019 issued to enforce the collection of the alleged deficiency tax assessments.

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[42]Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, reads:
Sec. 7. Jurisdiction. - The CTA shall exercise:
a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue; ...

[43] *La Flor Dela Isabela, Inc. c. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021; *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

The WDL is void not because the LOA is invalid but for having been issued prematurely.

The Court cannot yet rule on the validity/correctness of the assessments as the same is still pending appeal before the Office of the Commissioner of Internal Revenue.

Petitioner claims that the deficiency assessments which the subject WDL seeks to collect are null and void as the LOA authorizing the examination of its books of accounts for the TY 2010 allegedly ceased to be valid.

Petitioner explains that under the *BIR's General Audit Procedures and Documentation*, an RO is allowed only 120 days from receipt of the LOA by the taxpayer to conduct the audit and submit the required investigation report. If the RO cannot submit the final investigation report within 120 days, he/she must submit a Progress Report to the head office and surrender the LOA for revalidation.

According to petitioner, it received the LOA on August 25, 2011. Thus, the RO named therein had 120 days from August 25, 2011, or until December 23, 2011, to conduct the audit and submit the Progress Report. However, RO Ma. Socorro Concepcion failed to submit a *Progress Report* and surrender the LOA for revalidation and the issuance of a new LOA. Hence, citing this Court's ruling in *GS MTE Gains Corporation v. Commissioner of Internal Revenue*,[44] petitioner submits that the LOA became invalid upon the expiration of the 120-day period, and the resulting assessment or examination is a nullity.

We disagree with petitioner's assertion.

Let it be emphasized that nowhere in the NIRC of 1997, as amended, does it state that an LOA needs to be revalidated after the lapse of 120 days for it to be continuously valid (hereinafter referred to as the "revalidation rule"). Respondent only imposed the revalidation rule through various tax issuances, including

[44] CTA Case No. 8837, March 19, 2018.

Revenue Memorandum Order (RMO) No. 38-88,[45] Revenue Memorandum Circular (RMC) No. 40-2006,[46] and BIR's *General Audit Procedure and Documentation.* A careful review of the said issuances proves that the failure of a revenue officer to revalidate the LOA will not cause its invalidity but would only expose the officer to administrative charges.

Moreover, RMO No. 044-10,[47] which supersedes the aforementioned issuances, provides explicitly that LOAs are no longer required to be revalidated. The applicable provision is hereby quoted, to wit:

> "Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions."

Given the foregoing, the revalidation rule has already been withdrawn starting June 1, 2010. Thus, when the subject LOA was issued on August 25, 2011, RMO No. 044-10 was already the applicable issuance. Accordingly, petitioner's assertion that the WDL dated August 29, 2019 is void because it emanated from an invalid LOA is without merit. It must be stressed that the subject LOA remains valid even if the RO fails to finish the audit and submit the final investigation report within 120 days.

Nonetheless, the Court finds that the said WDL is still void, given its premature issuance.

As emphasized by the Supreme Court in the *LRTA case*, if a WDL is issued while the deficiency tax assessment is still pending appeal with the Commissioner of Internal Revenue, the WDL is void and should be of no force and effect.

In the instant case, petitioner received the FDDA dated May 10, 2019, signed by Regional Director Romulo L. Aguila, on an even date. Petitioner appealed the FDDA before the Office of the Commissioner on June 6, 2019. However, pending action by the Commissioner on the appeal, petitioner received the WDL

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[45] Guidelines on Revalidation of Letters of Authority, 24 August 1988.
[46] Clarification on the Jurisdictions of the Large Taxpayer Service, the Enforcement Service and the Revenue Regions Including the Revenue District Offices and Divisions under Them, Performing Audit and Investigation Functions, and Guidelines for the Exercise of Such Jurisdictions and Functions, 13 July 2006.
[47] Electronic Issuance of Letters of Authority, 12 May 2010.

on August 29, 2019, enforcing the collection of the alleged deficiency tax assessments based on the FDDA.

Like the *LRTA case*, the subject WDL emanated from a "non-demandable assessment;" hence, We reiterate that it is void and of no force and effect.

Moreover, this Court cannot yet rule on the validity/correctness of the deficiency tax assessments as the same are still pending appeal before the Office of the Commissioner of Internal Revenue.

WHEREFORE, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated August 29, 2019, is declared **NULL and VOID** and is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice