REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

IVOCLAR VIVADENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11253

Members:

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

Promulgated:

APR 2 0 2026

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DECISION

***MODESTO-SAN PEDRO, J.*:**

The Case

The Petition for Review, filed on August 11, 2023, prays that the assessment issued by respondent against petitioner on its alleged deficiency income tax, expanded withholding tax ("EWT"), final withholding tax ("FWT"), final withholding value-added tax ("FWVAT"), totaling ₱19,943,115.07, and compromise penalty of ₱90,000.00, inclusive of interest and compromise penalty for taxable year ("TY") 2018, be declared null and void.[1]

The Parties

Petitioner Ivoclar Vivadent, Inc. is a domestic corporation duly organized and existing under the Philippine laws, with office address at 10 Ampere Street, Light Industry and Science Park 1, Special Economic Processing Zone, Diezmo, Cabuyao City, Laguna.[2]

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[1] Summary of the Case, Pre-Trial Order, Docket – Vol. II, p. 626.
[2] Par. 2.1, Petition for Review, Docket – Vol. I, p. 8.

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"; "Commissioner") empowered to perform the duties of said office, including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto, as provided by law.[3]

The Facts

On October 2, 2019, petitioner received electronic Letter of Authority ("LOA") eLA201100062787 / LOA-T9B-2019-00000056, dated September 25, 2019, authorizing Revenue Officer ("RO") - Jaime II Lustado, Bianca Castillo, and Group Supervisor ("GS") - Ma Liza Alcala of Revenue Region No. 09B - Task Force to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable period January 1, 2018 to December 31, 2018.[4]

Subsequently, on August 24, 2020, petitioner received a Notice of Informal Conference ("NIC"), dated August 24, 2020, from Bureau of Internal Revenue ("BIR") Revenue Region No. 9B Revenue Office District No. 57, Biñan City, West Laguna, assessing petitioner of deficiency income tax, EWT, documentary stamp tax, FWT, FWVAT, and compromise penalty amounting to ₱18,111,155.59. On September 30, 2020, petitioner filed its Position Letter presenting its arguments against the deficiency tax assessments.[5]

On May 26, 2021, petitioner received the BIR's Preliminary Assessment Notice ("PAN") dated May 11, 2021 issued by BIR Office of the Regional Director, Revenue Region 9B-LaQueMar, San Pablo City. In the said PAN, the BIR assessed petitioner of deficiency income tax, EWT, FWT, FWVAT and compromise penalty amounting to ₱18,688,786.69.[6]

On June 10, 2021, petitioner filed its Reply to the PAN with the Office of the Regional Director, Revenue Region 9B-LaQueMar, San Pablo City.[7]

On August 5, 2021, petitioner received from the same BIR Regional Director a Formal Letter of Demand and Assessment Notices ("FLD/FAN")[8] demanding payment of deficiency taxes in the amount of ₱18,464,323.39 for deficiency income tax, EWT, FWT. FWVAT and compromise penalty.[9]

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3 Par. 1.1, Summary of Admitted Facts, Joint Stipulation of Facts and Simplification of Issues ("JSFSI"), Docket – Vol. II, p. 600.
4 Par. 1.2, *id.* at 600 to 601.
5 Par. 1.3, *id.* at 601.
6 Par. 1.4, *id.*
7 Exhibit "P-5", BIR Records, pp. 460 to 588.
8 Exhibit "P-6" for petitioner, Exhibit "R-8" for respondent *id.* at 624 to 634.
9 Par. 1.5, Summary of Admitted Facts, JSFSI, Docket – Vol. II, p. 601.

On September 3, 2021, petitioner filed its Administrative Protest ("Protest") against the FLD/FAN, through a request for reinvestigation.[10]

On August 17, 2022, petitioner received from same Regional Office its Final Decision on Disputed Assessment ("FDDA"), dated July 26, 2022,[11] where the BIR's position showed that petitioner was liable to pay deficiency taxes in the amount of ₱19,943,115.07, and compromise penalty of Php90,000.00.[12]

On September 16, 2022, petitioner filed its Motion for Reconsideration of the FDDA ("MR of the FDDA") before the Office of the Commissioner.[13]

Thereafter, the BIR issued a Warrant of Distraint and/or Levy ("WDL") on January 23, 2023 ("First WDL"), which respondent attempted to serve to petitioner twice, first on February 10, 2023, then on March 29, 2023.[14]

On February 17, 2023, petitioner filed a letter ("Letter dated February 17, 2023") addressed to OIC Regional Director Dondanon A. Galera (OIC-RD Galera) of Revenue Region 9B (LaQueMar) questioning the attempt of respondent to serve the WDL.[15]

On July 13, 2023, petitioner received a Second WDL dated July 7, 2023.[16]

Petitioner filed a Petition for Review (with Motion for Suspension of Collection of Tax) before this Court on August 11, 2023[17] praying for the nullification of respondent's assessment for alleged deficiency income tax, EWT, FWT, FWVAT, totaling ₱19,943,115.07, and compromise penalty of Php90,000.00 (collectively as "deficiency tax assessments") for TY 2018 and withdrawal of the WDL dated July 7, 2023. Respondent's Answer was then filed on November 28, 2023.[18]

The case was referred to mediation before the Philippine Mediation Center – Court of Tax Appeals on February 26, 2024, but the parties did not agree to mediate.[19]

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[10] Exhibit "P-7", BIR Records, pp. 639 to 661.
[11] Exhibit "P-2" for petitioner, Exhibit "R-10", *id.* at 832 to 842.
[12] Par. 1.6, Summary of Admitted Facts, JSFSI, Docket – Vol. II, p. 601.
[13] Exhibit "P-3", BIR Records, pp. 851 to 879.
[14] Exhibit "R-12", *id.* at 1080.
[15] Exhibit "R-14", *id.* at 1006 to 1007.
[16] Exhibit "P-1" for petitioner, Exhibit "R-15" for respondent, *id.* at. 1087.
[17] Docket – Vol I, pp. 7 to 37.
[18] *Id.* at pp. 229 to 255.
[19] *Id.* at p. 426.

On June 3, 2024, the Court issued a Resolution granting petitioner's Motion for Suspension of Collection of Tax and directed respondent to: (1) refrain from pursuing any administrative action for collection of petitioner's alleged deficiency taxes; and (2) discontinue the enforcement or implementation of the Second WDL until the instant case has been resolved.[20]

The Pre-Trial Conference was held on June 11, 2024.[21] Prior thereto, the petitioner's and respondent's respective Pre-Trial Briefs were filed on May 30, 2024[22] and June 5, 2024,[23] respectively.

On July 10, 2024, the parties submitted their Joint Stipulation of Facts and Simplification of Issues.[24] The Pre-Trial Order was then issued on August 16, 2024.[25]

Trial ensued with the parties presenting their respective testimonial and documentary evidence.

Petitioner offered the testimonies of: (1) Ms. Daniela F. San Agustin,[26] the President and Managing Director of petitioner; and (2) Ms. Marlene B. Limsiaco,[27] the Finance and Administration Director of Petitioner.

Petitioner filed its Formal Offer of Evidence on October 1, 2024,[28] with Respondent's Comment (Re: Petitioner's Formal Offer of Evidence) filed on October 7, 2024.[29] In the Resolution dated November 13, 2024,[30] the Court denied the admission of Exhibits "P-11" and "P-12," for not being found on the records of the case, and "P-13," for failure to identify the same, while admitting the rest.

For his part, respondent offered the testimonies of ROs Jaime II D. Lustado[31] and Denisse Dionne Villanueva.[32]

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20 *Id.* at pp. 455 to 465.
21 Docket – Vol. II, pp. 584 to 588.
22 Docket – Vol. I, pp. 438 to 452.
23 Docket – Vol. II, pp. 540 to 544.
24 *Id.* at 600 to 607.
25 *Id.* at 626 to 631.
26 Exhibit "P-8", Docket – Vol. I, pp. 411 to 419; Minutes of the hearing held on, and Order, dated September 10, 2024, Docket – Vol. II, pp. 648-649A.
27 Exhibit "P-9", *id.* at 420 to 425; Minutes of the hearing held on, and Order, dated September 10, 2024, *id.*
28 Docket – Vol. II, pp. 654 to 661.
29 *Id.* at 663 to 667.
30 *Id.* at 672 to 673.
31 Exhibit "R-18", *id.* at 470 to 478; Minutes of the hearing held on, and Order, dated November 14, 2024, *id.* at 674 to 676.
32 Exhibit "R-19", *id.* at 551 to 556; Minutes of the hearing held on, and Order, dated November 14, 2024, *id.*

Respondent then filed his Formal Offer of Evidence on November 26, 2024,[33] without petitioner's Comment.[34] In the Resolution dated February 28, 2025, the Court resolved to admit all of respondent's evidence.[35]

Petitioner filed its Memorandum on April 9, 2025,[36] while respondent's Memorandum was submitted on April 22, 2025.[37] Thus, in a Minute Resolution dated April 29, 2025, the case was submitted for decision.[38]

Hence, this Decision.

The Issue

The parties submitted that the issue to be resolved is:

> Whether or not petitioner is liable for deficiency income tax, expanded withholding tax, final withholding tax, final withholding value-added tax totaling Pesos Nineteen Million Nine Hundred Forty-Three Thousand One Hundred Fifteen and 07/100 (Php19,943,115.07), and compromise penalty of Pesos Ninety Thousand (Php90,000.00) for the taxable year 2018, inclusive of deficiency interest and compromise penalty, as provided in the NIRC of 1997, as amended.[39]

Arguments of the Parties

Petitioner's Arguments:

Petitioner argues that respondent's deficiency tax assessments for TY 2018 is void for the following violations against its right to due process:

1.) Respondent failed to validly serve the LOA and NIC to petitioner;

2.) Assuming that the NIC was validly served, the same is invalidated by respondent's failure to attach the working papers;

3.) Respondent failed to address the arguments it raised in the Reply to the PAN when respondent issued the FLD/FAN; and

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33 *Id.* at 678 to 687.
34 CTA Judicial Records Verification dated January 7, 2025, *id.* at 600.
35 *Id.* at 693 to 694.
36 *Id.* at 696 to 727.
37 *Id.* at 729 to 753.
38 *Id.* at 756.
39 Simplification of Issues, JSFSI, *id.* at 602.

4.) The FLD/FAN did not indicate a definite amount of tax due and a demand for payment.

Lastly, petitioner asserts that respondent's right to civil remedies for collection of taxes under *Section 205 of the National Internal Revenue Code, as amended, ("the Tax Code")* was prematurely exercised.

Respondent's Counter-arguments:

Respondent counter-argues that the Court has no jurisdiction over the subject matter since petitioner failed to elevate the instant case within the reglementary period provided by the Tax Code and its implementing rules and regulations, that the FLD contained an unequivocal demand for petitioner pay the deficiency taxes due, and that the assessments in the FLD/FAN are valid as petitioner failed to substantiate its claim to refute the findings in the PAN.

The Ruling of the Court

The Petition must be **PARTIALLY GRANTED** and **PARTIALLY DISMISSED**.

The Court has jurisdiction over the validity of the WDL.

Respondent argues that the issuance of the WDL has the same effect of the decision of the CIR to petitioner's MR of the FDDA. Thus, the 30-day period to appeal such must be reckoned from the attempted service of the First WDL on February 10, 2023,[40] which was refused to be received by petitioner, and not from the service of the Second WDL. Counting 30 days therefrom, petitioner should have filed its Petition for Review before the CTA until March 13, 2023,[41] but failed to do so. Consequently, the Court cannot have jurisdiction herein.

In addition, respondent asserts that filing a motion for reconsideration of the FDDA does not toll the 30-day period to appeal the same before the CTA.

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[40] Exhibit "R-12", BIR Records, p. 1080.

[41] The following business day after February 12, 2023, which fell on a Sunday.

On the other hand, petitioner, in appealing the Second WDL, which it received on July 13, 2023,[42] invokes the Court's jurisdiction on "other matters". Thus, the Petition for Review filed on August 11, 2023 was accordingly filed on time.

Petitioner is correct.

Section 7(a)(1) of Republic Act ("RA") No. 1125, as amended, ("the *CTA Law*") provides for the jurisdiction of the Court of Tax Appeals ("CTA") on "other matters" arising from the Tax Code or other laws or part of law administered by the BIR:

> 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*;

It has been consistently held 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 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.[43]

However, since this case involves two WDLs, the question arises as to which WDL is appealable to this Court.

We rule that the 30-day period to appeal the validity of the WDL before the Court should be from the service of the Second WDL.

It is true that petitioner acknowledges the attempt to serve the First WDL to it and its refusal to receive the same. However, as can be gleaned from the Letter dated February 17, 2023 filed with the BIR,[44] petitioner had a

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[42] Exhibit "P-1" for petitioner, Exhibit "R-15" for respondent, *id.* at 1087.

[43] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division, et. al.*, G.R. No. 258947, March 29, 2022; *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023.

[44] Exhibit "R-14", BIR Records, *id.* at 1007 to 1006.

proper basis to refuse receipt of the First WDL as it manifested that it was still waiting for the CIR's decision on its MR of the FDDA.

After said letter, the next action that reached petitioner was the service of the Second WDL. It is at this point that petitioner was able to ascertain that respondent was adamant in pursuing the collection of the alleged deficiency tax assessment even when the MR of the FDDA was still pending resolution by the CIR. Petitioner duly received the Second WDL on July 13, 2023 prompting the filing of the present Petition on August 11, 2023, well-within the 30-day period to appeal the improper collection remedy of respondent falling under the jurisdiction of the Court under "other matters" of *Section 7(a)(1) of the CTA Law.*

On the other hand, respondent is mistaken in asserting that a motion for reconsideration of the decision on the protest against the FLD/FAN does not toll the 30-day period to appeal the FDDA before the CTA.

Respondent relied on the following provision in *Revenue Regulations ("RR") No. 18-13,* which states that:

> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, *by the Commissioner*, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. *A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.*
> (Italics supplied.)

However, the foregoing caveat applies only when the denial was made by the Commissioner himself, and not by his duly authorized representative. Otherwise stated, when it is the denial by the Commissioner himself that is subjected to a motion for reconsideration, it is at that point when the 30-day period to appeal to the CTA is not tolled.

Considering that the denial of the Protest in this case was made by respondent's duly authorized representative, the following provision of *RR No. 18-13,* instead, applies:

> 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.
> (Italics supplied.)

Notably, nothing from the foregoing provides for a caveat that the elevation of a taxpayer's protest to the CIR through a request for reconsideration does not toll the 30-day period to appeal before the CTA. The caveat, instead, pertains to the prohibition on filing a request for reinvestigation before the Commissioner. Thus, contrary to respondent's understanding, the filing of the motion for reconsideration before the Commissioner did not toll the 30-day period to appeal to the CTA.

The WDLs were prematurely issued.

Petitioner assails the issuance of First and Second WDLs on January 23, 2023 and July 7, 2023, respectively, despite the pendency of petitioner's MR of the FDDA before the CIR. As such, the WDLs were premature.

We agree.

The *Tax Code* and its rules and regulations have been consistent in defining when the civil remedies for collection may be pursued – it is only when the taxes have become "delinquent".

The definition of a delinquent account in general is provided in *RMO No. 011-14,*[45] as amended by *RMO No. 045-19,* where *Item II.1* thereof provides:

> II. Definition of Terms. — In applying the provisions of this Order, the terms herein provided are defined as follows:
>
> 1. Accounts Receivable/Delinquent Account (AR/DA) — refers to the amount of tax due from a taxpayer which was not paid within the time prescribed for its payment. It includes:
>
> A. **Unpaid Revenues** which is composed of the following:
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> 1. Dishonored check;
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> 2. Validated unpaid tax due per tax returns filed by the taxpayer;
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> 3. Validated unpaid second installment of income tax by individual taxpayers; and

[45] Policies, Guidelines and Procedures in the Periodic Clean-Up of Accounts Receivable/Delinquent Accounts.

> 4. Tax liabilities of taxpayers per final and executory decision of the Court.
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> B. **Unpaid Assessments** which become final and executory due to taxpayer's failure to do the following:
>
> 1. File valid protest within the prescribed period of thirty (30) days from its receipt. For this purpose, a valid protest is one which is filed within the time prescribed and it contains the factual and/or legal basis of the protest;
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> 2. Submit the necessary documents to support request for re-investigation within sixty (60) days from the date of filing a valid protest;
>
> 3. Appeal the decision of the BIR either to the Commissioner's Office or Court of Tax Appeals within thirty (30) days from receipt of the decision denying the protest;
>
> 4. File a motion for reconsideration the decision of the Court favorable to the BIR or appeal the same to higher court within the prescribed time for its filing;
>
> 5. Update the BIR on the change of address or cancellation of business registration resulting to the non-receipt of the assessment notice that was delivered or served to the address as indicated in the Registration database in the Integrated Tax System.

As can be gleaned from the foregoing, there are only two instances when a tax due becomes an accounts receivable/delinquent account ("AR/DA"), which are either from: 1.) unpaid revenues; or 2.) unpaid assessments *which became final and executory* due to any of the above applicable instances.

Relatedly, *Item II.10* of the same *RMO* defines the execution of a WDL as follows:

> 10. Execution of Warrant of Distraint and Levy — this refers to the implementation of the administrative and judicial remedies in the enforcement of collection of *delinquent tax liabilities* by a duly authorized Revenue Officer/Official of the Bureau.
>
> For this purpose, a WDL is considered executed when the Seizure Agent (SA) has served any or all of the following notices to the concerned person or entity that has possession of the garnishable/leviable/distrainable properties of the delinquent taxpayer, depending on the circumstances surrounding the case:
>
> a. Warrant of Garnishment (for cash in bank, shares of stocks, bonds and bills, trades and non-trade receivables and other garnishable properties as defined under Section 207 (A) of the Tax Code);

b. Notice of Levy (for real properties); and

c. Notice of Actual/Constructive Seizure (for personal properties, such as furnitures and equipment, stocks in trade, and other distrainable properties as defined under Section 207 (A) of the Tax Code).

In case the concerned entities to whom the notices were served upon have confirmed existence of distrainable and/or leviable properties, and the value/s of which is/are enough to satisfy the taxpayer's delinquent accounts, including the delinquency penalties and expenses related to seizure, maintenance and disposition of the levied/distrained properties, the service of the Notice of Tax Lien or Notice of Encumbrance shall be deemed complete execution of the WDL.

In the event that there is no property to be distrained and/or levied, and/or the total value of the levied and/or distrained properties is not enough to fully satisfy the taxpayer's delinquent accounts, including the delinquency penalties and expenses related to seizure, maintenance and disposition of levied/distrained properties, the WDL can already be considered as executed and the AR/DA case, after the disposition of the levied/distrained properties, can be placed under the suspense file.
(Italics supplied.)

Accordingly, the implementation of the administrative and judicial remedies in the enforcement of collection, *i.e.*, the execution of WDL, is geared only against delinquent tax liabilities.

Under the later *RMO No. 035-19*, dated July 8, 2019, the BIR is now authorized to immediately pursue the civil remedies for the enforcement of collection provided under *Section 205 of Tax Code*. However, said immediacy shall be made only in two instances, thus:

In order to protect the interest of the government, civil remedies provided under Section 205 of the National Internal Revenue Code (NIRC), as amended, shall immediately be pursued as soon as the "Form 40-Collectible" reports relative to the following have been received by the offices responsible in the enforcement of collection remedies:

1. List of Unpaid Revenues (Annex "A") — these are self-assessed taxes arising from dishonored check, unpaid second installment of income tax due of individual taxpayers and duly validated unpaid tax due per tax returns; and

2. List of Unpaid Tax Assessments (Annex "B") — these are *tax assessments* arising from investigation *which have become "final and executory"* in accordance with existing policies.
(Emphases, Ours)

Further, *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[46] *("Mannasoft")* emphasized that availing of the summary collection remedies under the *Tax Code*, such as the issuance of a WDL, are premised first and foremost on the existence of "delinquent taxes". This premise is lacking when the matter of the taxpayer's civil liability is subject of a valid request for reinvestigation which is still pending resolution by the respondent and its authorized agents.

The same principle was reiterated in *Commissioner of Internal Revenue v. Stradcom Corporation*,[47] where it was held that before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become delinquent. As to the concept of delinquent account, the Court, citing Revenue Regulations No. 17-86, has held that this refers to the amount of tax due from a taxpayer who failed to pay the same within the time prescribed for its payment, that arises from (1) a self-assessed tax, whether or not a tax return was filed, or (2) *a deficiency assessment issued by the BIR which has become final and executory.*

The concept of a delinquent account under *RR No. 17-86* was maintained in *RMO No. 011-14*, as amended by *RMO No. 045-19*.

Verily, it has been the consistent procedural rule of the BIR, based on the foregoing issuances and as confirmed by jurisprudence, that the implementation of civil remedies for the enforcement of collection of taxes due from deficiency assessments may be pursued only when the same has become final and executory.

Testing petitioner's evidence against the instances under *Item II.1.b of RMO No. 011-14*, as amended by *RMO No. 045-19*, the deficiency tax assessments issued by respondent in this case is far from becoming final and executory, since:

1.) Petitioner did not fail to timely file a request for reinvestigation against the FLD/FAN on September 3, 2021,[48] well-within the 30-day period to protest from its date of receipt on August 5, 2021;[49]

2.) Petitioner did not fail to timely file the supporting documents to its request for reinvestigation on October 26

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[46] G.R. No. 244202, July 10, 2023.
[47] G.R. No. 255520, April 21, 2025.
[48] Exhibit "P-7", *id.* at 639 to 661.
[49] Exhibit "P-6" for petitioner, Exhibit "R-8" for respondent, *id.* at 624 to 634.

2021,[50] well-within the 60-day period from filing of the request; and,

3.) Petitioner did not fail to timely appeal the decision denying its request for reinvestigation (*i.e.* FDDA) to the CIR, when it filed the MR of the FDDA on September 16, 2022,[51] well-within the 30-day period to appeal from its date of receipt on August 17, 2022.[52]

Respondent is consequently not yet authorized to implement any of the administrative and judicial remedies in the enforcement of collection, *i.e.* the execution of the WDL. Thus, the issuance of the WDLs in this case is premature and We cannot permit respondent to pursue a method of collection, *i.e.*, through distraint or levy, which cannot yet be validly resorted to at this stage.

Accordingly, the First and Second WDLs cannot be given force and effect until such time that the deficiency tax assessments for TY 2018 upon which it is based have become final and executory in accordance with *RMO No. 011-14*, as amended by *RMO No. 045-19.*

The Court has no jurisdiction on the deficiency tax assessments.

RR No. 18-13, amending certain sections of *RR No. 12-99*, has enumerated the following remedies of the aggrieved taxpayer on the denial of its protest against the FLD/FAN:

> ***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.
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> . . . .
>
> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or

[50] As found in BIR Records, Exhibit "R-17", pp. 663 to 772.
[51] Exhibit "P-3", *id.* at 851 to 879.
[52] Par. 1.6, Summary of Admitted Facts, JSFSI, Docket – Vol. II, p. 601.

> administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> ***If the** protest or **administrative appeal is not acted upon by the Commissioner** within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either*: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or ***(ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision***.
>
> It must be emphasized, however, that *in case of inaction on protested assessment within the 180-day period,* ***the option of the taxpayer*** *to either*: (1) *file a petition for review with the CTA* within 30 days after the expiration of the 180-day period; *or (2) await the final decision of the Commissioner or his duly authorized representative* on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, ***are mutually exclusive and the resort to one bars the application of the other***.
> (Italics and boldfacing supplied.)

The foregoing was explained in *Mannasoft*, citing *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[53] and *Light Rail Transit Authority v. Bureau of Internal Revenue*[54] *("LRTA")*, where the following alternative recourse are available to the taxpayer in case of respondent's inaction to a protest:

> (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessment; or
>
> (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.

> Accordingly, ***the two options are mutually exclusive and resort to one bars the other***. This is also consistent with *Section 3(a)(2), Rule 4 of A.M. No. 05-11-07-CTA*, or the *Revised Rules of the Court of Tax Appeals*, which states that *"should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court* under *Section 3 (a), Rule 8* of these *Rules*."
> (Italics and boldfacing supplied.)

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53 G.R. No. 168498, April 24, 2007.
54 G.R. No. 231238, June 20, 2022.

In this case, after petitioner was served with the First WDL on February 10, 2023,[55] petitioner immediately filed with the BIR a Letter dated February 17, 2023[56] indicating that it had not yet received any correspondence and/or decision from the Office of the Commissioner concerning its motion for reconsideration and that its refusal to receive the First WDL was justified as it was premature.

As can be deduced from said letter, petitioner opted for the second recourse as provided by *RR No. 18-13* and explained in *Mannasoft*, which is to await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.

As the two options are mutually exclusive, petitioner's resort to awaiting the CIR's final decision on its MR of the FDDA effectively barred it from appealing the FDDA with the CTA. This is so even when there was a Second WDL issued on July 7, 2023.

Mannasoft went on to explain that it is true that a WDL, in certain cases, triggers the running of the 30-day period to elevate the case to the CTA as it constitutes as a constructive and final denial of the taxpayer's protest. However, this was only applicable at a time when the taxpayer still had no choice of awaiting the decision of the Commissioner on its protest – *i.e.* before the *CTA Law* added inactions of the CIR to the CTA. Citing *LRTA* therein:

> *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.
> (Boldfacing and italics in the original. Citations omitted.)

[55] Exhibit "R-12", BIR Records, p. 1080.
[56] Exhibit "R-14", *id.* at 1006 to 1007.

Given that the *CTA Law*, the *Tax Code* and its rules and regulations has now introduced the option to await respondent's decision on a taxpayer's protest on the assessment and specifically states that recourse to such bars the remedy of appeal to the CTA until the respondent's decision has been received, the taxpayer is bound by such choice.

The provision on mutual exclusivity of remedies is not an empty passage. Its purpose is two-fold: (1) so as not to pre-empt respondent's authority to review the actions and decisions of his subordinates, which is rightfully under his powers and the Court so respects; and (2) taxpayers cannot be allowed to circumvent such provision by attacking the merits of the deficiency tax assessments in the course of appealing the validity of a subsequently issued WDL before the CTA. For if We do, it will set a dangerous precedent where a conflict may arise after the Court may possibly render a decision favoring the taxpayer, and then later receive an unfavorable decision by respondent, which will then again be possibly subjected to another appeal before the CTA.

Further, while it is true that the lone issue stipulated in this case is to determine whether petitioner is liable for deficiency tax assessments for TY 2018, it would be improper for the Court to rule on its merits considering that petitioner is essentially still waiting for respondent's decision on its MR of the FDDA. On this respect, there is yet no decision on a disputed assessment which is appealable before the Court under *Section 7(a)(1) of the CTA Law*. Thus, as far as the deficiency tax assessment is concerned, the CTA still has no jurisdiction over the same and it would be an error for the Court to rule upon its merits even if the issue was stipulated by the parties.

Further, the Court cannot simply disregard the policy on mutual exclusivity of the remedies and proceed to rule upon the merits of the deficiency tax assessments on the mere basis of the parties' stipulation on the issue of its validity or that it was voluntarily litigated during trial. For in doing so, the Court would erroneously assume jurisdiction over an assessment which is not yet ripe for determination and, as earlier discussed, would tantamount to a circumvention on the mutual exclusivity of the remedies available to a taxpayer.

On the other hand, even if We consider the Petition as an appeal on respondent's inaction on petitioner's MR of the FDDA, the Court still cannot acquire jurisdiction thereon.

Section 228 of the Tax Code provides that if the protest is denied in whole or in part, or is not acted upon within 180 days *from submission of documents*, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within 30 days from receipt of the said decision, or from the lapse of 180-day period; otherwise, the decision shall become final, executory and demandable.

Meanwhile, recall that *Section 3.1.4 of RR No. 18-13* mentions two instances when there is a 180-day period for the BIR to act on a taxpayer's protest: 1) from the filing of protest (in case of a motion for reconsideration) or submission of supporting documents (in case of a motion for reinvestigation); and 2) from the filing of an administrative appeal before the CIR in case of full or partial denial by his duly authorized representative on a taxpayer's protest.

However, in *Nueva Ecija II Electric Cooperative, Inc. Area II v. Commissioner of Internal Revenue*,[57] it was clarified that there is only one set of 180-day period for the BIR to act on a taxpayer's protest:

> As correctly ruled by the CTA *EB, Section 228 of Republic Act (RA) No. 8424, or the National Internal Revenue Code, as amended (hereafter, Tax Code)* ***unmistakably provides that the one hundred eighty (180)-day period should be reckoned from the "submission of documents,"*** which in this case was on 19 September 2016. Perforce, the statutory 180-day period lapsed on 18 March 2017. From such point, petitioner had thirty (30) days, or until 17 April 2017, to elevate the case to the CTA. However, it filed its Petition only on 2 June 2017, which is beyond the reglementary period provided by the law. Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the authorized representative of respondent Commissioner of Internal Revenue (respondent), including the option of elevating the protest to the respondent himself through a request for reconsideration. *However, nowhere in said provision does it provide that a fresh 180-day period is granted to the respondent to act on such administrative appeal.* As aptly observed by the CTA EB, upholding petitioner's argument would run contrary to the clear language of Section 228 and would unduly expand the period provided by the law. Necessarily, taxpayers must exercise their rights in the manner and within the periods provided by statute and the pertinent regulations. . . . (Italics and boldfacing supplied)

As can be recalled, petitioner submitted the supporting documents to its request for reinvestigation on October 26, 2021,[58] giving the BIR 180 days to act thereon or until April 26, 2022. However, based on the evidence on record, petitioner forego the expiration of the 180-day period and opted to wait for respondent's duly authorized representative to decide on its Protest. It received the FDDA rendered by the Regional Director[59] on August 17, 2022,[60] which triggered its exercise of the option to elevate the same to the CIR

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[57] G.R. No. 258101 (Notice), April 19, 2022.
[58] As found in BIR Records, Exhibit "R-17", pp. 663 to 772.
[59] Exhibit "P-2" for petitioner, Exhibit "R-10", *id.* at 832 to 842.
[60] Par. 1.6, Summary of Admitted Facts, JSFSI, Docket – Vol. II, p. 601.

Thus, by the time petitioner filed the MR of the FDDA on September 16, 2022, the 180-day period to act thereon was already fully consumed. Given that it is not entitled to a fresh 180-day period to act on the MR of the FDDA, petitioner's only remaining recourse is to indeed await respondent's decision, then appeal it before the CTA.

ACCORDINGLY, the *Petition for Review* is **PARTIALLY DISMISSED**, for lack of jurisdiction, with respect to the portion of the Petition questioning the subject Taxable Year 2018 deficiency tax assessments, and for being prematurely filed without respondent's final decision appealable to this Court.

On the other hand, the Petition is **PARTIALLY GRANTED**, with respect to the portion of the Petition questioning the Warrants of Distrain and/or Levy issued on January 23, 2023 and July 7, 2023. Said Warrants are consequently **CANCELLED** and **SET ASIDE**.

Respondent and any of his officers and/or employees are hereby **ORDERED** to **CEASE** and **DESIST** from committing any or all acts to collect the alleged deficiency tax assessments for Taxable Year 2018 as indicated in the Warrants until the same have become final and executory in accordance with *Revenue Memorandum Order No. 011-14, as amended by Revenue Memorandum Order No. 045-19.*

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice