REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MILESTONE HOLDINGS CORPORATION, Petitioner,	CTA CASE NO. 8858
	Members:
-versus-	FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 31 2019 10:55 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review filed on August 8, 2014[1], petitioner Milestone Holdings Corporation prays for (1) the cancellation and nullification of the Warrant of Distraint and/or Levy (WDL) issued against it; (2) for the cancellation of the tax liability imposed against it; and (3) the refund of illegally garnished amount of Fifty One Thousand Eight Hundred Eighty and 77/100 Pesos (₱51,880.77) with interest at twenty percent (20%) per annum from garnishment until payment.

THE ANTECEDENT FACTS

Petitioner is a domestic corporation with principal office address at Unit 501, Textron Building, 168 Luna Mencias Street, Addition Hills, San Juan, Metro Manila. Its primary purpose is "to invest in, acquire, purchase or otherwise own, lease, use, sell, exchange, transfer, assign, cede, mortgage,

[1] Vol. 1 Docket, pp. 1-17.

pledge, or otherwise dispose of properties of every kind, nature and description, real or personal including securities like shares of stock, commercial papers including but not limited to bonds, debentures, notes, evidences of indebtedness, and other obligations of any corporation or corporations whether domestic or foreign, and as owner or holder of any such real or personal property, stocks, bonds, debentures, contracts, or obligations, to receive, collect and dispose of the income interest, and dividends arising from such property and to possess and exercise in respect thereof all the rights, powers and privileges of ownership, including all voting powers of any stock so owned; to carry on and manage the general business of any company."[2] It is registered with the BIR with Tax Identification No. (TIN) 004-672-802-000.[3]

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

On April 14, 2010, petitioner received Letter Notice (LN) No. 042-TRS-07-00-00049 dated March 15, 2010, stating that after the computerized matching of information/data provided by Withholding Agents/Payors and Payees/Income Recipients with its declarations in its income/VAT/percentage/withholding tax returns, the BIR found a discrepancy of ₱13,173,214.00.[4]

In its letter response with attachments filed with the Bureau of Internal Revenue (BIR) on April 30, 2010, petitioner explained that its withholding agent Commonwealth Foods Incorporated (Comfoods) is not its customer but of its affiliate Milestone Petroleum Marketing Corporation (MPMC) and that Comfoods mistakenly indicated in its Alphalist of Payees

[2] Exhibit P-26-a.
[3] Exhibits P-28 to P-28-a.
[4] Exhibits R-2 to R-2.1.

Subject to Expanded Withholding Tax its TIN instead of MPMC's.[5]

In its follow-up letter issued on May 20, 2010, the BIR stated that petitioner failed to take any positive action to refute the validity of its findings and/or present any documentary evidence to reconcile the variances indicated therein.[6]

On June 21, 2010, petitioner submitted to the BIR copies of the following documents, namely: (1) Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) BIR Form No. 1601-E (January to December 2007); (2) Annual Information Return of Creditable Income Taxes Withheld (Expanded) BIR Form No. 1604-E (2007); (3) Monthly Remittance Return of Income Taxes Withheld on Compensation BIR Form No. 1601-C (January to December 2007); and (4) Annual Information Return of Income Taxes Withheld on Compensation BIR Form No. 1604-CF (2007).[7]

Subsequently, the BIR issued a Preliminary Collection Letter (PCL) dated August 2, 2013 requesting petitioner to pay its alleged total tax liability of ₱8,640,158.64, lest collection through administrative summary remedies shall be enforced.[8]

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

On April 24, 2014, a WDL was served upon petitioner by the BIR.[10]

In response thereto, petitioner, on May 22, 2014, filed with the Collection Division of BIR Revenue Region No. 7 a

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[5] Exhibits P-5 to P-5-b.
[6] Exhibit P-6.
[7] Exhibits P-7 to P-7-b.
[8] Exhibit P-8.
[9] Exhibit P-15.
[10] Exhibits R-10 and R-10.1.

letter stating that it should not be held liable for the error of its withholding agent and requested for the examination of the record of the case.[11] This was followed by a letter of the same tenor on May 26, 2014, addressed to the Regional Director of Revenue Region No. 7.[12]

On June 10, 2014, petitioner requested for lifting of the WDL for being oppressive, Cancellation of Tax Liability for lack of factual and legal bases, and for the refund of illegally garnished amount under its account.[13]

On August 8, 2014, petitioner filed the instant Petition for Review, citing inaction of respondent as ground therefore, praying for the lifting of the WDL, cancellation of the assessment issued against it and the refund of the garnished amount.

In his Answer[14], respondent moved to dismiss the case as the Court has no jurisdiction to entertain the same given that the subject assessment has become final, executory and demandable. Allegedly, under Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations No. (RR No.) 12-99, as amended by RR No. 18-2013, a valid administrative protest against the Formal Letter of Demand (FLD)/Final Assessment Notice (FAN) may be filed within thirty (30) days from receipt of such assessment lest the same shall become final, executory and demandable. However, petitioner failed to take such remedial action. It failed to timely file a valid protest despite the issuance and service of the FAN and waited until its bank account was garnished by the BIR.

On October 20, 2014, a Notice of Pre-Trial Conference[15] was issued setting the proceeding on November 27, 2014.

On November 4, 2014, petitioner filed a Motion for Judgment on the Pleadings[16], contending that respondent's answer failed to tender an issue and the answer admitted

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[11] Exhibits P-21 to P-21-b.
[12] Exhibits P-22 to P-22-b.
[13] Exhibits P-3 to P-3-g.
[14] Vol. 1 Docket, pp. 103-108.
[15] Vol. 1 Docket, p. 109.
[16] Vol. 1 Docket, pp. 110-121.

most, if not all, the material allegations of its Petition for Review. Further, respondent allegedly failed to comply with the requisites of a specific denial, hence, deemed to have admitted the material allegations of its pleading.

On November 25, 2014, petitioner filed an Urgent Motion to Hold Pre-Trial in Abeyance[17] which was granted on November 27, 2014[18].

On February 20, 2015[19], the Court denied petitioner's Motion for Judgment on the Pleadings and its subsequent Motion for Reconsideration on March 10, 2015[20].

Petitioner appealed such denial of its Motion for Judgment on the Pleadings to the Supreme Court via a Petition for Review on Certiorari[21]. The same was however dismissed on August 10, 2015, for petitioner's failure to sufficiently show grave abuse of discretion on the part of the Court of Tax Appeals (CTA) in rendering the challenged resolutions.[22]

After the Pre-trial Conference, the parties filed their Joint Stipulations[23] on May 24, 2016 on the basis of which the Court issued a Pre-Trial Order on June 9, 2016[24].

In support of its case, petitioner presented Rosalina M. Bustamante, Annette Emeline C. Gaerlan, and Joseph Espenocilla, as its witnesses.

Petitioner's Chief Financial Officer (CFO), **Rosalina M. Bustamante,** testified[25] that petitioner is a holding or an investment company engaged in owning property, or shares of stocks and trades in stocks, bonds, notes, proofs of indebtedness or obligations, and in investing in several corporations such as Milestone Petroleum Corporation.

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[17] Vol. 1 Docket, pp. 128-132.
[18] Minutes of the Hearing dated November 27, 2014, vol. 1 docket, p. 133.
[19] Vol. 1 Docket, pp. 140-143.
[20] Vol. 1 Docket, pp. 169-188.
[21] Vol. 1 Docket, pp. 202-224.
[22] Notice by the Third Division of the Supreme Court, vol. 1 docket, p. 424.
[23] Vol. 2 Docket, pp. 585-591.
[24] Vol. 2 Docket, pp. 593-601.
[25] Exhibits P-48 and P-48-a.

Petitioner, through its Board of Directors, authorized her to represent it in the present case as indicated in the Secretary's Certificate[26]. Petitioner filed the instant Petition for Review on August 8, 2014 to question the BIR's garnishment of its account with Bank of the Philippine Islands (BPI) and the issuance of WDL which it received in 2014.

Petitioner learned about the garnishment when its check issued to Mt. Malarayat Golf and Country Club was dishonored by BPI as its account had been garnished by the BIR[27]. Upon advice of its counsel, petitioner sent a letter-request to the BIR for the release of the garnished amount and the lifting of the WDL.

The witness further declared that prior to the said garnishment, petitioner received from the BIR a letter-notice (L.N. No. 042-TRS-07-00-00049) dated March 15, 2010, informing it of the alleged discrepancy on gross sales, receipts or revenues, among others, in the total amount of ₱13,000,000.00. In its Letter dated April 26, 2010[28], petitioner explained that the BIR might have confused petitioner with MPMC, which issued the sales invoice to its customer Comfoods indicating payment for the petroleum products sold.

In its follow-up Letter dated May 20, 2010[29], the BIR averred that petitioner failed to take any positive step to refute its findings. This prompted petitioner to submit another Letter dated June 21, 2010[30] together with additional supporting documents, *i.e.,* copies of BIR Form No. 1601-E, monthly remittance return of creditable taxes withheld, BIR Form No. 1604-E, annual information with return of creditable income taxes withheld, BIR Form No. 1501-C, monthly remittance return, BIR Form No. 1604-CF and annual information return of income taxes withheld, to substantiate its position that the taxes subject of the earlier Letter-Notice had been paid and declared by the seller MPMC.

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[26] Exhibit P-1.
[27] Exhibits P-3.
[28] Exhibits P-5 to P-5-b.
[29] Exhibit P-6.
[30] Exhibits P-7 to P-7-b.

In 2013, petitioner received from the BIR a PCL[31] demanding the payment of the sum of ₱8,640,000.00. In response thereof, petitioner sent to the BIR a Letter dated September 11, 2013, together with supporting documents, namely, Certification from Comfoods dated June 6, 2011 admitting its error in its report to the BIR[32] and BIR Form No. 1604-E[33], the alphalist of payees[34], and BIR Form No. 2307[35]. Comfoods explained that it erroneously used petitioner's TIN when it reported its purchase of petroleum products to MPMC.

The witness also testified that petitioner also received from the BIR a FNBS dated August 15, 2013[36] with attached FAN dated May 18, 2011[37] with Details of Discrepancies[38], two (2) Assessment Notices[39] and BIR Form No. 1708. Thereafter, petitioner received a WDL[40]. In view thereof, she prepared a Letter dated May 22, 2014[41] addressed to the BIR Collection Division, Revenue Region No. 7 questioning the garnishment and explaining petitioner's position relative to the Letter-Notice and WDL. Upon BIR's advice, she prepared and sent a similar letter, this time addressed to the Regional Director of Revenue Region No. 7, attaching thereto the same supporting documents.

According to the witness, the garnishment caused embarrassment to petitioner since it is an investment compounded by the check that bounced in the sum of ₱5,000.00.

On cross-examination, the witness denied that petitioner received a FAN hence, it did not file a protest. She also clarified that petitioner submitted to the BIR the summary list of MPMC for the year 2007 in 2008.

Further, she explained that petitioner was incorporated in 1998 as a holding company and it is the parent company

[31] Exhibit P-8.
[32] Exhibits P-10 to P-10-a.
[33] Exhibit P-11 to P-11-a.
[34] Exhibits P-12 to P-12-b.
[35] Exhibits P-13 to P-14-a.
[36] Exhibit P-15.
[37] Exhibit P-16.
[38] Exhibit P-16-a.
[39] Exhibits P-17 to P-18.
[40] Exhibit P-20.
[41] Exhibits P-21 to P-21-b.

of MPMC which was incorporated in 2002. They have the same stockholders.

Witness **Annette Emeline C. Gaerlan**[42], the senior manager of the accounting department of MPMC and in charge of the over-all maintenance of its books of accounts testified that she knows petitioner as it is the majority stockholder of MPMC. She claimed that the BIR and Comfoods erroneously mistook petitioner for MPMC, the seller in the transactions with Comfoods but the taxes thereof were assessed against petitioner which had no participation in the said transactions. Moreover, the alleged tax liability had already been paid by MPMC, which sold and delivered the oil products to Comfoods. Such mistake occurred three times. The first time was covered by LN No. 04-TRS-07-00-00049 for 2007, the second in 2009 and the third in 2010, which included transactions covered by LN No. 042-TRS-10-00-00060 dated December 2, 2011[43].

According to her, she was aware of the issuance of LN No. 042-TRS-10-00-00060 as she was assigned to clarify the matter and to submit to the BIR proof that petitioner was not liable for the tax for assessment as indicated in the said letter-notice. To prove her position that petitioner has no delinquency tax, she presented to the BIR supporting documents, *i.e.,* notarized certification from Comfoods[44] that it purchased the petroleum products from MPMC and not from petitioner, BIR Form 2307 for 2010[45], MPMC's alpha list of withholding agents[46], Form 1604-E of Comfoods and the alpha list of Comfoods[47], the Computation Sheet and Details of Discrepancies[48], and the letter of MPMC's Vice-President and CFO, Sally Bustamante[49].

She reiterated that petitioner is not liable for the subject tax assessment it as the alleged transactions were between MPMC and the buyer, Comfoods. Moreover, petitioner is not engaged in the sale or marketing of petroleum products,

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[42] Exhibits P-49 to P-49-a.
[43] Exhibit P-32.
[44] Exhibits P-33 to P-33-d.
[45] Exhibits P-35 to P-35-c-2.
[46] Exhibits P-36 to P-36-b.
[47] Exhibits P-37 to P-37-b-1.
[48] Exhibits P-34 to P-34-b.
[49] Exhibits P-33 to P-33-c.

MPMC is. However, the latter has already paid the taxes indicated in the BIR's letter-notice.

In addition, the witness declared that the BIR did not pursued its case against MPMC and that when MPMC requested for tax refund for its transactions for 2010[50], the same was granted and the amount was subsequently released to MPMC[51].

In relation to LN No. 04-TRS-07-00-00049 issued against petitioner, she stated that upon instruction from MPMC's Board of Directors, she prepared a Letter dated April 26, 2010[52] explaining that petitioner was not liable for the alleged discrepancy as it was not involved in the subject transactions between MPMC and Comfoods. As a holding company, petitioner is not engaged in the sale of petroleum products. Notwithstanding receipt of the letter, the BIR issued a follow-up letter to petitioner indicating that it did not take any positive action to refute its findings, which prompted her to file another letter to the BIR dated June 21, 2010[53] attaching thereto supporting documents, *i.e.*, BIR Form Nos. 1601-E, 1604-E, 1601-C and 1604-CF.

On October 9, 2013, she, in behalf of petitioner, filed with the BIR a Letter dated September 11, 2013, together with additional documents, *i.e., a* Certification from Comfoods dated June 6, 2011[54] that MPMC was the vendor in the subject transactions and that the corresponding taxes thereto have been paid as indicated in BIR Form No. 1604-E for 2007[55] and Alpha List of Payees both from Comfoods[56], and BIR Form No. 2307[57]. On the same day, the BIR officer gave her a copy of the FNBS dated August 15, 2013[58] and asked to counter sign it acknowledging her receipt[59].

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[50] Exhibit P-39 to P-38-a.
[51] Exhibit P-44.
[52] Exhibit P-5 to P-5-b.
[53] Exhibits P-7 to P-7-b.
[54] Exhibit P-10 to P-10-a.
[55] Exhibits P-11 to P-11-a.
[56] Exhibits P-12 to P-12-a.
[57] Exhibits P-13 to P-14-a.
[58] Exhibit P-19.
[59] Exhibit P-19-a.

Witness **Joseph Espenocilla** testified[60] that he is currently an accounting clerk at the Treasury Department of Comfoods and as such he is in charge of the company's payment of expenses, preparation of checks as payment to its suppliers, preparation of its tax forms and safekeeping of its documents pertaining to its tax payments. He held the same position when he was with the company's Accounting Department. Comfoods is engaged in the manufacture of coffee, biscuits and chocolate products.

He knows petitioner because it previously supplied petroleum products for Comfoods' manufacturing business until around 2003. He also knows MPMC because it has been a long-time supplier of Comfoods of bunker fuel oil.

Sometime in 2007 and 2010, an employee of MPMC requested from Comfoods certifications and copies of BIR Tax Returns allegedly because the BIR found an error in the alpha list of suppliers and it needed to clarify that the transactions involving purchases of bunker fuel were between Comfoods and MPMC. Thus, he prepared and released to MPMC the requested documents.

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

Per Resolution dated May 5, 2017[61], petitioner rested after its formal offer of evidence.

Thereafter, respondent presented its lone witness, **Leona R. Nuguid**, who testified[62] that she was the Revenue Officer (RO) who initiated the collection of petitioner's

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[60] Exhibits P-50- to P-50-a.
[61] Vol. 2 Docket, pp. 782-783.
[62] Exhibit R-12.1.

delinquent account for 2007 through summary remedies after review of the entire BIR docket[63] of the case.

The record reveals that petitioner's tax case for 2007 emanated from LN No. 042-TRS-07-00-00049 dated March 15, 2010[64]. After its issuance and service, a Follow-up Letter dated May 20, 2010[65] was issued and served to petitioner on May 26, 2010. This was followed by a NIC dated February 15, 2011[66].

On August 18, 2011, the PAN with Details of Discrepancies was received by petitioner as shown in the Registry Return Receipt[67]. Thereafter, the FAN with Details of Discrepancies, Assessment Notice for VAT and Assessment Notice for Income Tax[68] were issued against petitioner.

Subsequently, petitioner's tax case for 2007 was endorsed to the BIR's Collection Division, Revenue Region No. 7 and was assigned to him for review through a Memorandum of Assignment (MOA-698-042-L1) dated August 1, 2013[69].

After examination of docket, she prepared the PCL and the FNBS for issuance and service to petitioner. Petitioner's tax case was later endorsed to Line 2 of the Collection Division which issued the WDL[70] and Warrants of Garnishment[71] against petitioner.

Finally, the witness explained that petitioner's account was considered delinquent because the deficiency assessment issued against it has become final, executory and demandable due to its failure to timely file a valid protest against the FAN.

Per Resolution dated January 30, 2018[72], respondent rested after his Motion to Admit Formal Offer of Exhibits with

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[63] Exhibit R-1.
[64] Exhibits R-2 to R-2.2.
[65] Exhibits R-3 to R-3.1.
[66] Exhibit R-4.
[67] Exhibits R-5 to R-5.2.
[68] Exhibits R-6 to R-6.4.
[69] Exhibit R-7.
[70] Exhibits R-10 to R-10.1.
[71] Exhibits R-11 to R-11.5.
[72] Vol. 2 Docket, pp. 861-864.

attached Formal Offer of Evidence filed on October 11, 2017[73] was granted.

On August 2, 2018[74], the case was submitted for decision after petitioner filed its Memorandum with Manifestation[75] on July 10, 2018. Despite notice, respondent failed to file any[76].

ISSUES

The issues stipulated by the parties[77] are quoted below, thus:

> I. Whether petitioner is liable to pay the questioned deficiency income tax and value added tax (VAT);
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> II. Whether respondent erred in its findings in the letter notice in attributing the sale of MPMC (as vendor) to Comfoods (as vendee), to petitioner;
>
> III. Whether the applicable legal basis for tax investigation for the calendar year ending on 31 December 2007 is Revenue Memorandum (RMO) No. 17-2009;
>
> IV. Whether respondent's failure to comply with the provisions of RMO No. 17-2009 invalidates the assessment and subsequent processes of respondent;
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> V. Whether the due process rights of petitioner were violated by respondent in its failure to observe the applicable rules of procedure in the assessment and collection of deficiency taxes;

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[73] Vol. 2 Docket, pp. 831-840.
[74] Vol. 2 Docket, pp. 904-905.
[75] Vol. 2 Docket, pp. 867-896.
[76] Records Verification Report dated May 22, 2018, Vol. 2 Docket, p. 866.
[77] Joint Stipulations, Issues, vol. 2 docket, pp. 589-590.

VI. Whether respondent's right to assess on the subject transaction has already prescribed;

VII. Whether petitioner is entitled to the dissolution and lifting of the writ of distraint and/or levy in accordance with Sections 207 and 208 of the National Internal Revenue Code (NIRC);

VIII. Whether petitioner is entitled to the release and refund of the funds garnished by respondent through the Bank of the Philippine Islands;

IX. Whether respondent is liable to petitioner for damages by reason or on occasion of the improper garnishment of its bank account.

THE RULING OF THE COURT

Before going into the merits of the case, the Court deems it necessary to first determine the Court's jurisdiction to entertain the present Petition for Review.

It has been ruled that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[78]

In relation to the foregoing, the CTA, as a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction,[79] as provided under Section 7 of Republic Act (RA) No. 1125, as amended. It reads:

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[78] *Commissioner of Internal Revenue v. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.
[79] *Allied Banking Corporation v. CIR*, G.R. No. 175097, February 5, 2010.

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;

(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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

Corollary thereto, Section 3(a)(1) and (2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

> (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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* 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; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

As provided in the above provisions, the CTA has exclusive appellate jurisdiction to review cases involving inaction of respondent in disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC, as amended, or other laws administered by the BIR. However, in cases involving disputed assessments, the CIR's inaction within the prescribed period of one hundred eighty days mandated under Section 228 of the NIRC, as amended, shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the CTA.

Thus, for the CTA to acquire jurisdiction over the appeal, an assessment must first be disputed or assailed by the taxpayer and in case no decision was issued by respondent within the prescribed one hundred eighty days from submission of complete documents, the taxpayer adversely affected by such inaction may elevate its case for review to the CTA within (30) days from the expiration of the prescribed one hundred eighty (180)-day period. The same period shall be observed in case respondent issued an adverse decision.

Significantly, in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[80], the Supreme Court ruled that "the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected".

It is clear from the foregoing and as provided under the second part of Section 7(a)(1) of R.A. No. 1125, as amended, this Court has the competence to determine whether a warrant of distraint and levy was validly issued by the BIR. Such issue falls within the ambit of other matters arising under the NIRC or other laws administered by the BIR.

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

Note however that the exercise of this Court's jurisdiction to rule on "other matters" is conditioned on the timeliness of the filing of the appeal. Section 11 of RA No. 1125, as amended by RA No. 9282, provides, thus:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – <u>Any party adversely affected by a decision,</u>

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

> ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA 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"

Section 3(a) of Rule 8 of the RRCTA implements the above provision, as follows:

> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed **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.

Gathered from the record are the following significant information capsulized in the table below, thus:

Letter Notice[81]	Received on April 14, 2010
Response to Letter Notice[82]	Filed on April 30, 2010

[81] Exhibits R-2 and R-2.1.
[82] Exhibit P-5.

Follow-up letter[83]	Received on May 26, 2010
Letter submitting additional documents[84]	Filed on June 21, 2010
Preliminary Collection Letter[85]	Dated August 2, 2013
Final Notice Before Seizure[86]	Received on October 9, 2013
Warrant of Distraint and/or Levy[87]	Served on April 24, 2014
Letter responses to Warrant of Distraint and/or Levy[88]	Filed on May 23, 2014 and May 27, 2014
Warrants of garnishment[89]	Became known to petitioner on May 20, 2014[90]
Request for the lifting of the Warrant of Distraint and/or Levy[91]	Filed on June 10, 2014
Petition for Review[92]	Filed on August 8, 2014

In the Petition for Review, petitioner explicitly seeks the cancellation and nullification of the WDL which was issued as an administrative remedial action to effect collection of its alleged tax liability. Thus, the mandated thirty-day period to appeal before the CTA should be reckoned from petitioner's receipt of the WDL, which constitutes an act of respondent on "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR, which could be the subject of an appropriate appeal with the CTA.[93] The subsequent issuance of the Warrant of Garnishment was but a follow-up directed towards full implementation of the collection of tax liabilities based on a final and executory assessment.[94]

Hence, counting thirty (30) days from April 24, 2014, the date of receipt of the WDL by petitioner, petitioner had until May 26, 2014[95] within which to question the issuance of said WDL by the CIR in connection with the assessment issued against it which became final and executory by reason of petitioner's failure to timely assail the same. In other words, the instant Petition for Review filed on August 8, 2014 was

[83] Exhibit P-6.
[84] Exhibit P-7.
[85] Exhibit P-8.
[86] Exhibit R-9.
[87] Exhibit P-20.
[88] Exhibits P-21 and P-22.
[89] Exhibits R-11, R-11.1, R-11.2, R-11.3, R-11.4, and R-11.5.
[90] Exhibit P-48.
[91] Exhibit P-3.
[92] Vol. 1 Docket, p. 1.
[93] See *Jowelles Autoparts, Inc. v. Bureau of Internal Revenue represented by the Regional Director, Revenue District 15,* CTA EB No. 1594 (CTA Case No. 9333), April 2, 2018.
[94] *Id.*
[95] May 24, 2014 falls on a Saturday.

instated way beyond the prescribed 30-day period to seek judicial intervention.

Even assuming that the Warrant of Garnishment is considered to be the final decision or ruling of respondent on petitioner's position, and the 30-day period is reckoned from May 20, 2014, the date it was made known to petitioner, still the Petition for Review was filed out of time on August 8, 2014.

Time and again it has been held that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[96]

For petitioner's failure to timely take a plain and appropriate remedy within the prescribed period, the Warrant of Distraint and/or Levy has become final and executory. In fine, this Court is devoid of jurisdiction to act on petitioner's appeal. There being no indication that the warrants issued to effect collection the subject liability, there is no refund to speak of.

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

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[96] *Producers Bank of the Philippines v. Court of Appeals, et al.*, G.R. No. 126620, April 17, 2002.

I Concur:

MA. BELEN M. RINGPIS-LIBAN
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the 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