REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

JOWELLES AUTO PARTS, INC.,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE REPRESENTED BY THE REGIONAL DIRECTOR, REVENUE DISTRICT 15,
Respondent.

CTA CASE NO. 9333

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 26 2016 2:20 p.m.

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RESOLUTION

Before the Court is petitioner's *Application for Temporary Restraining Order and/or Writ of Preliminary Injunction* incorporated in its *Petition for Review*[1] filed on April 15, 2016.

Petitioner Jowelles Auto Parts, Inc. avers that it is a domestic corporation, with principal place of business at Emergency Road, District 1, Prenza, Cauayan City, Isabela.

Respondent Bureau of Internal Revenue (BIR), on the other hand, is a government agency, represented by its Regional Director, Revenue District No. 15.

Petitioner alleges that on June 25, 2014, respondent's OIC Regional Director issued a Letter of Authority with No. eLA No. 015-2012-000072[2], for the examination of petitioner's books of accounts and other accounting records

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[1] Docket, pp. 10-19.
[2] Annex "B", docket, p. 22.

for all internal revenue taxes for the period covering January 1, 2010 to December 31, 2010.

On November 10, 2014, petitioner received a copy of the Preliminary Assessment Notice[3] (PAN) dated November 8, 2014, to which it filed a protest on November 23, 2014.

On November 27, 2014, petitioner received a Formal Letter of Demand[4] (FLD) dated November 26, 2014, finding it liable for deficiency Income Tax (IT) and Value-Added Tax (VAT) in the total amount of ₱1,019,457.60, inclusive of interest and surcharge. On December 16, 2014, petitioner protested the FLD.

On March 25, 2015, petitioner received a letter dated March 3, 2015[5] from OIC-Regional Director Marina C. De Guzman, reiterating the assessment and demand for payment of its 2010 tax liabilities.

On April 1, 2015, petitioner filed a *Legal Petition Notice* dated March 28, 2015, inquiring if respondent's letter dated March 3, 2015 was his final decision on the disputed assessments.

On June 30, 2015, petitioner received a letter dated June 29, 2015[6] from respondent's Revenue District Officer (RDO) Salvador V.R. Lasala, informing it that the assessment was already for collection. Petitioner questioned the propriety of the collection in its *Legal Petition Notice* filed on July 6, 2015.

On July 23, 2015, petitioner received a Warrant of Distraint and/or Levy (WDL) No. 15-17-003[7], which it also questioned in its *Legal Petition Notice* filed on July 24, 2015.

[3] Annex "C", docket, pp. 23-24.
[4] Annex "E", docket, pp.28-29.
[5] Annex "G", docket, pp. 41-42.
[6] Annex "I", docket, p. 49.
[7] Annex "K", docket, p. 56.

On August 4, 2015, petitioner received a letter dated July 24, 2015[8] from OIC Regional Director Marina C. De Guzman, stating that her letter dated March 3, 2015 was the Final Decision on the Disputed Assessment (FDDA).

On August 12, 2015, petitioner filed a *Legal Petition Notice/Motion for Reconsideration* dated August 10, 2015 assailing the letter dated July 24, 2015. This incident according to petitioner is still pending.

On August 25, 2015, OIC-Regional Director Marina C. De Guzman issued a letter[9] to petitioner affirming the validity of the WDL No. 15-17-003.

On February 16, 2016, respondent's OIC - Asst. Regional Director Jose Eric C. Furia, issued a Warrant of Garnishment[10] against petitioner's account in the Bank of the Philippine Islands (BPI).

Petitioner moved to lift the cited Warrant of Garnishment but the same was denied in a letter[11] dated March 10, 2016, issued by Regional Director Arnel SD. Guballa.

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

Hence, the instant *Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction* filed on April 15, 2016, asking the Court to:

1. LIFT and CANCEL the Warrants of Distraint and/or Levy No. 15-17-003 and Garnishment of Respondent; and

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[8] Annex "L", docket, pp.57-58.
[9] Annex "N", docket, p. 64.
[10] Annex "O", docket, p. 65.
[11] Annex "S", docket, p. 83.

2. ISSUE a Temporary Restraining Order (TRO) for twenty (20) days and thereafter a Writ of Preliminary Injunction enjoining Respondent from proceeding with the collection of tax against Petitioner.

In its *Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction (PI)* to suspend the collection of the alleged deficiency taxes, petitioner claims that the issuance of the WDL No. 15-17-003 as well as the Warrant Garnishment is invalid and premature and in violation of its right to due process.

Petitioner believes that the letter dated March 3, 2015 did not strictly conform to the format of a Final Decision on a Disputed Assessment (FDDA) as provided and illustrated in Section 3.1.5 (ii) of Revenue Regulations No. 18-2013, for it failed to state "**that the same is her final decision**".

Further, it was only on August 4, 2015 or upon receipt of the letter dated July 24, 2015 of OIC - Regional Director Marina C. De Guzman, indicating that the letter dated March 3, 2015 was her final decision, that it was properly informed and notified of the denial of its protest. Since, its Legal Petition Notice/Motion for Reconsideration dated August 10, 2015 was filed within the prescriptive period, it is entitled to the issuance of a TRO and/or PI against respondent, lest its interests would be jeopardized. Per its manifestation, petitioner is willing to post bond if required by the Court.

In his *COMMENT on Petitioner's Application for Temporary Restraining Order and/or Writ of Preliminary Injunction with MOTION TO DISMISS*, respondent prays to deny petitioner's application for suspension of collection of taxes for the Court lacks jurisdiction over the main action. Respondent explains that provisional or ancillary remedies can only be granted by a court which has jurisdiction over the main action. Respondent states that based on Section 9, Republic Act (RA) No. 9282, amending Section 11 of RA 1125, and Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals, in relation to Section 228 of the National Internal Revenue (NIRC) of 1997, a petition to lift the Warrants of Distraint and/or Levy and Garnishment is not among the cases the CTA is empowered to hear. Thus, for respondent, petitioner's resort to a wrong mode of appeal is fatal.

Even assuming the instant Petition for Review conformed to rules on appeal before the CTA, petitioner's statutory right to appeal was already waived or lost. Contrary to petitioner's position, he already issued his final decision on its protest to the FLD/FAN through his letter dated March 3, 2015 **reiterating** the demand for payment of petitioner's 2010 tax liabilities. Stretching further, granting that the letter of March 3, 2015 was not his final decision, the letter dated June 29, 2015 which petitioner received on June 30, 2015, clearly indicated that the assessment was already for collection, a clear indication of the finality of his decision. But instead of seeking judicial intervention within 30-days from receipt of his final decision, petitioner continued to take the wrong course of action by filing nuisance petitions with the BIR regional and district offices. In the meantime, the decision on disputed assessment became final, executory and demandable removing it from the Court's mantle of protection thereby rendering the issuance of the Warrants of Distraint and/or Levy and Garnishment valid and enforceable.

Without jurisdiction over the main action, the CTA cannot grant the ancillary remedy of suspension of collection in favor of petitioner. Hence, petitioner's application for suspension of collection should be denied, and the instant *Petition* be dismissed on jurisdictional ground.

In its *Reply*, petitioner insists that the Court has jurisdiction as the issuance of a warrant of garnishment is a decision of respondent on other matters arising under the NIRC as provided in Section 7(a) of RA No. 9282. Further, the issuance of the Warrants of Distraint and/or Levy and Garnishment was premature since respondent was yet to act on its appeal via its letter dated July 24, 2015 which ruled that the letter of March 3, 2015 was his Final Decision on Disputed Assessment.

THE RULING OF THE COURT

The authority of the CTA to rule upon the validity of a WDL issued by respondent is expressly provided in the second part of Section 7 (1) (a) and (b) of RA 1125, as amended, which states:

> Section 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; xxx (*Emphasis supplied*)

The case *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[12] (*Philippine Journalist*), provided a clearer lens on the matter as the Supreme Court categorically ruled that the CTA has jurisdiction to resolve controversies involving the validity of the issuance of a WDL as it is among the "other matters" arising under the NIRC of 1997, as amended, thus:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if**

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

> **the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected. (*Emphasis supplied*)

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

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

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

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

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

> **appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes xxx (*Emphasis supplied*)

The following table indicates the pertinent dates in determining the timeliness of the instant *Petition for Review*:

Date Filed	Action
November 10, 2014	Petitioner received the Preliminary Assessment Notice
November 27, 2014	Petitioner received the Formal Letter of Demand (FLD)
December 16, 2014	Petitioner filed its protest to the FLD
March 25, 2015	Petitioner received from respondent a reply-letter dated March 3, 2015, reiterating the assessment and demand for payment of its alleged tax liabilities for taxable year 2010
April 1, 2015	Petitioner filed a Legal Petition Notice to clarify whether respondent's reply-letter dated March 3, 2015 was his Final Decision on Disputed Assessment (FDDA)
June 30, 2015	Petitioner received a letter dated June 29, 2015, informing that the assessment was already for collection.
July 6, 2015	Petitioner filed with respondent a Legal Petition Notice dated July 3, 2015, questioning the propriety of the collection
July 23, 2015	**Petitioner received the Warrant of Distraint and/or Levy No. 15-17-003**
August 4, 2015	Petitioner received from respondent a letter dated July 24, 2015, stating that his reply-letter dated March 3, 2015 was his FDDA
August 12, 2015	Petitioner moved to reconsider

	respondent's letter dated July 24, 2015 by way of a Legal Petition Notice/Motion for Reconsideration dated August 10, 2015
August 25, 2015	Respondent issued a letter insisting the validity of the Warrant of Distraint and/or Levy No. 15-17-003
February 16, 2016	Respondent issued a Warrant of Garnishment against petitioner's account with Bank of the Philippine Island
February 18 and 23, 2016 and March 8, 2016	Petitioner filed on different dates a Legal Petition Notice requesting and reiterating its request for the lifting of the Warrant of Garnishment
March 21, 2016	Petitioner received from respondent a letter dated March 10, 2016, denying its request for the lifting of the Warrant of Garnishment
March 28, 2016	Petitioner filed a Legal Petition Notice moving for a reconsideration of the denial of its request to lift the Warrant of Garnishment
April 15, 2016	**Alleging inaction, petitioner filed the instant Petition for Review**

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

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

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

On the issuance of the Warrant of Garnishment against petitioner's BPI account on February 16, 2016, the same is but a follow-up directed towards full implementation of the collection of tax liabilities based on a final and executory assessment. Significantly, both the WDL No. 15-17-003 and the Warrant of Garnishment stem from the same FDDA dated November 26, 2014, finding petitioner liable for deficiency income tax and value-added tax in the total amount of ₱1,019,457.60. Thus, when petitioner received the WDL No. 15-17-003 on July 23, 2015, its right to appeal before the Court commenced to run and not from receipt of the Warrant of Garnishment on February 16, 2016.

Elementary is the rule that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. Further, the right to appeal is not a natural right nor 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 the law.[13]

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

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[13] *Commissioner on Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice