REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

QUADFOODS CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10419

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

JUN 06 2024
1:04 p.m.

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DECISION

MANAHAN, *J.*:

THE CASE

This Petition for Review (With Urgent Motion for Suspension of Collection of Tax and Motion to Dispense with the Payment of Bond) filed on December 9, 2020 by petitioner Quadfoods Corporation, seeks for the Court to issue a judgment declaring null and void the deficiency income tax, value-added tax and expanded withholding tax assessments and compromise penalties, respectively, in the total amount of Five Million Seventy Thousand Nine Hundred Eighty-One and 21/100 Pesos (Php5,070,981.21) for taxable year 2014.

THE PARTIES

Petitioner Quadfoods Corporation is a corporation duly registered with and licensed by the Philippine Securities and Exchange Commission in accordance with Philippine laws.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) vested under the

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[1] Admitted Facts and Stipulation of Facts, Pre-Trial Order dated January 18, 2023, Docket, Vol. II, p. 703.

appropriate laws with the authority to carry out the functions, duties, and responsibilities of said Office, including *inter alia*, the power to refund internal revenue taxes, fees or other charges, penalties pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules, and regulations, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioner is primarily engaged in the establishment and operation of various food businesses.

On November 27, 2015, a certain Ronel Marasigan (Marasigan), who represented himself as a restaurant manager for petitioner, received a copy of the Letter of Authority (LOA)[2] SN: eLA201200013864 / LOA-055-2015-00000138 dated November 24, 2015, issued against petitioner. The subject LOA authorized Revenue Officer (RO) Polly Anne April M. Belen (Belen) and Group Supervisor (GS) Arturo V. Santos, Jr. (Santos) to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, among others, for the period from January 1, 2014 to December 31, 2014.

On January 18, 2016 and February 5, 2016, respondent, through Revenue District Officer (RDO) Ray Anthony O. Geli, respectively sent to petitioner his First Request for Presentation of Records[3] and Second and Final Notice for Presentation of Records.[4] Both notices were received by a certain Anna May Paredes, who represented herself as manager for the petitioner.

On September 9, 2016, RO Belen, GS Santos and OIC, Assistant RDO Noel D. Roncesvalles issued a Memorandum for Issuance of Subpoena Duces Tecum[5] against petitioner. Thus, on October 5, 2016, respondent, through Regional Director (RD) Gerardo R. Florendo, issued a *Subpoena Duces Tecum*[6] against petitioner. The same was served by RO Belen to petitioner through Marasigan on even date.

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[2] Exhibit "R-1", BIR Records, p. 2.
[3] Exhibit "R-2", BIR Records, p. 3.
[4] Exhibit "R-3", BIR Records, p. 5.
[5] Exhibit "R-4", BIR Records, p. 8.
[6] Exhibit "R-5", BIR Records, p. 6.

Consequently, RO Belen issued an undated Memorandum[7] for the RDO, recommending that petitioner's case be forwarded to the BIR's Assessment Division for the issuance of a Preliminary Assessment Notice (PAN).

On September 7, 2017, petitioner, through Marasigan, received a copy of the PAN[8] dated August 31, 2017.

On October 26, 2017, petitioner received the Formal Letter of Demand[9] (FLD) dated October 25, 2017.

On October 30, 2017, petitioner, through Mr. Christopher G. Belisario (Belisario), sent a letter[10] to Officer-in-Charge (OIC) RD Mr. Manuel V. Mapoy to protest the PAN.

On January 9, 2018, petitioner, through Belisario, filed its supplemental protest letter[11] to the FLD dated October 25, 2017.

Consequently, RO Belen issued a Memorandum[12] dated July 3, 2018, recommending that the case be forwarded to the Assessment Division after considering the adjustments in relation to petitioner's allowable deductions as per audit investigation of RO Belen and GS Herly C. Lucido.

On January 29, 2019,[13] petitioner, through Marasigan, received the Final Decision on Disputed Assessment (FDDA) dated January 24, 2019.

On December 9, 2020, petitioner filed the instant Petition for Review.

THE ISSUE

The parties submitted this lone issue to be resolved by the Court:

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[7] Exhibit "R-6", BIR Records, pp. 170-171.
[8] Exhibit "R-7", BIR Records, pp. 197-200; Exhibit "P-6", Docket, Vol. II, pp. 797-800.
[9] Exhibit "P-7", Docket, Vol. II, pp. 801-802; Exhibit "R-9", BIR Records, pp. 209-210; Facts, Petition for Review, par. 8(c), Docket, Vol. I, p. 10.
[10] Exhibit "R-8", BIR Records, p. 207.
[11] Exhibit "R-11", BIR Records, pp. 241-242.
[12] Exhibit "R-12", BIR Records, p. 292.
[13] Exhibit "R-13", BIR Records, pp. 311-313.

> "a. Whether or not petitioner is not liable for the alleged deficiency withholding taxes and compromise penalties for the taxable year 2014 in the aggregate amount of Five Million Seventy Thousand Nine Hundred Eighty One and 21/100 Philippine Pesos (Php.5,070,981.21) inclusive of surcharge and interest."[14]

THE RULING

The Court will first determine if it has jurisdiction over the instant case.

Section 7 (a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "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, where the National Internal Revenue Code provides for a specific period for action, in which case the inaction shall be deemed a denial" *(emphasis supplied)*

Section 3 (a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), further 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

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[14] Statement of the Issues, Joint Stipulation of Facts and Issues, Docket, Vol. II, pp. 683-684.

Code or other laws administered by the Bureau of Internal Revenue;"

Section 11 of RA No. 1125, as amended by RA No. 9282, gives a party a period of thirty (30) days from receipt of the assailed decision within which to file an appeal with the Court, and we quote as follows:

> "Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, 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**."*(emphasis supplied)*

In *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[15] the Supreme Court discussed the effect of failure to perfect an appeal as required by the rules. Thus:

> "It has been ruled that 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**. At the risk of being repetitious, We declare that 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."*(emphasis supplied)*

Based on the foregoing, the Court has exclusive appellate jurisdiction over decisions of respondent in cases involving disputed assessments, among others. Consequently, the taxpayer is given a period of thirty (30) days from receipt of the assailed decision within which to file an appeal with the Court. Failure to perfect the appeal within the reglementary period has the effect of precluding the Court from acquiring jurisdiction over the case.

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[15] G.R. No. 167606, August 11, 2010.

In the instant case, records show that the FDDA was received by petitioner, through Marasigan, on January 29, 2019.[16] Meanwhile, petitioner alleges that it received the FDDA on January 28, 2019.[17] Counting thirty (30) days from the said dates, petitioner had until February 27, 2019 or February 28, 2019, within which to file the appeal before the Court. Unfortunately, the instant Petition was belatedly filed on December 9, 2020, or more than a year after the period to file the appeal had already lapsed.

On the other hand, petitioner alleges that on February 27, 2019, it filed through registered mail its motion for reconsideration of the FDDA with respondent.[18]

Section 3.1.5 of Revenue Regulations (RR) No. 12-99 as amended by RR No. 18-2013, provides for the option to file an administrative appeal to the CIR when the decision on the protest is issued by the CIR's duly authorized representative. To wit:

> "Section 3.1.5. Disputed Assessment. —
>
> xxx xxx xxx
>
> If the protest is denied in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either:
>
> (i) Appeal to the CTA within thirty (30) days from date of receipt of the said decision; or
>
> (ii) Elevate his protest through a 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."

Based on the afore-quoted section, the taxpayer has the option either to file an appeal with the CTA or to file an appeal with the CIR through a request for reconsideration, if the FDDA is issued by the Commissioner's duly authorized representative and not by the CIR himself. In the latter situation, the only

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[16] See Note 13.
[17] Facts, Petition for Review, par. 14, Docket, Vol. I, p. 12.
[18] See Note 17, par 15, Docket, Vol. I, p. 12.

option available to the taxpayer is to file an appeal with the CTA within thirty (30) days from receipt of the CIR's decision.

In the instant case, records reveal that while the subject motion for reconsideration was attached as Annex "M" of the instant Petition and is found in the BIR Records, it was not formally offered as evidence. Further, it was not marked or identified at any stage of the proceedings.

In *Commissioner of Internal Revenue v. Jerry Ocier,*[19] the Supreme Court discussed the necessity of a formal offer, as follows:

> "Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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>> SEC. 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*, thus:
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>> From the foregoing provision, **it is clear that for evidence to be considered, the same must be formally offered**. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking

[19] G.R. No. 192023, November 21, 2018.

> of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
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> However, in *People v. Napat-a* [179 SCRA 403 (1989)] citing *People v. Mate* [103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz.*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case**.
>
> The evidence may, therefore, be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."

Guided by the ruling in *Ocier*, the Court cannot consider any evidence not formally offered. As such, the alleged motion for reconsideration shall not be considered in this case.

Considering that petitioner belatedly filed the instant petition, the Court did not acquire jurisdiction over the case. Hence, the dismissal thereof is in order.

WHEREFORE, the instant Petition for Review (With Urgent Motion for Suspension of Collection of Tax and Motion to Dispense with the Payment of Bond) is **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
(With all due respect, see Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

QUADFOODS CORPORATION, *Petitioner,*

CTA Case No. 10419

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Promulgated:
JUN 06 2024
1:04 p.m.

x - x

DISSENTING OPINION

REYES-FAJARDO, *J*.:

With due respect, I humbly submit that the Court of Tax Appeals (CTA) in Division possesses jurisdiction over CTA Case No. 10419.

Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[1] as amended by RA No. 9282, acknowledges the Court's jurisdiction over respondent's action regarding other matters arising from the NIRC, as amended.[2] One of the matters specified in Section 2 of the same Code is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[3] This includes the issuance of the

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1 An Act Creating the Court of Tax Appeals.

2 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

3 SEC. 2. ***Powers and Duties of the Bureau of Internal Revenue.*** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... (Boldfacing supplied)

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rules, regulations, and measures in pursuit thereof.[4] Among these measures in collecting internal revenue taxes are through distraint of personal property, and levy of real property, *inter alia*.[5]

On top of that, an aggrieved party must appeal such action to the Court, within thirty (30) days from receipt thereof. These provisions respectively read:

> 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;
>>
>> ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **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.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....
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> ...[6]

Significantly, *Malabanan v. Republic of the Philippines*[7] instructed us that the jurisdiction of a court over the subject matter of a specific case must be measured in light of the allegations in petitioner's Petition for Review, along with the statute in force at the time the

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4 See *Commissioner of Internal Revenue v. Bank of the Philippines Islands,* G.R. No. 227049, September 16, 2020.

5 See Section 205(a) of the 1997 National Internal Revenue Code, as amended.

6 Boldfacing supplied.

7 G.R. No. 201821, September 19, 2018.

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action was filed. Theories or defenses of respondent in his answer or motion to dismiss should be ignored:

> The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the [petition for review], the law in force at the time the [petition for review] is filed, and the character of the relief sought, irrespective of whether the [petitioner] is entitled to all or some of the claims averred. **Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the [respondent] in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the [respondent].**[8]

As averred in its Petition for Review, on November 9, 2020, a WDL dated October 12, 2020 was served upon petitioner.[9] Counting thirty (30) days from November 9, 2020, the latter had until December 9, 2020 to seek judicial recourse. Therefore, the timely filing[10] of the Petition for Review (With Urgent Motion for Suspension of Collection of Tax and Motion to Dispense with the Payment of Bond) on December 9, 2020, vested the CTA in Division with jurisdiction over CTA Case No. 10419.

To be sure, I am aware of the CTA in Division's jurisdiction over respondent's decision on disputed assessments, likewise found in Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282. Yet, there are three (3) reasons why CTA Case No. 10419 is one which falls under other matters arising from the NIRC, as amended. These are:

First. The event which prompted petitioner to seek recourse before the CTA in Division is the WDL dated October 12, 2020. This much is clear as petitioner: (1) counted the filing of the Petition for Review in CTA Case No. 10419 from service of said WDL on November 9, 2020; and (2) said Petition was coupled with the Urgent Motion for Suspension of Collection of Tax and Motion to Dispense with the Payment of Bond.

Second. An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level.[11] In this regard, one of petitioner's premises in its Petition in CTA

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8 Boldfacing supplied.
9 Par. 17, Petition. Docket, p. 13.
10 *Id.* at p. 7.
11 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

Case No. 10419 is that it did *not* receive the BIR's Formal Letter of Demand and Final Assessment Notice (FLD/FAN) from which the WDL dated October 12, 2020 was anchored.[12] If petitioner's intention all along was to appeal respondent's decision on disputed assessment, then it would not have vehemently disclaimed receipt of the FLD/FAN. On the contrary, petitioner would have asserted that it seasonably protested that FLD/FAN it received from the BIR, because it is only then that an assessment become a disputed assessment. In other words, petitioner's insistence that it did *not* receive the FLD/FAN demonstrates that the appeal in CTA Case No. 10419 is *not* one of disputed assessment.

Third. In a recent case,[13] it was ruled that if the taxpayer's position is that the BIR's collection letters is void *due to non-receipt* of the FLD/FAN from which it is founded, the proper remedy is to *directly* impugn the collection letters to the CTA in Division, within thirty (30) days from receipt thereof:

> Following *LBP*, the fact of non-receipt of the FAN for CY 2014 is conclusive upon [the taxpayer]. Congruous with *Allied Banking* and *Maxicare*, the administrative dispute machinery outlined in Section 228 of the NIRC, as amended, *i.e.*, the filing of request for reinvestigation thereto, and right to submit supporting documents within the prescribed period, along with our jurisdiction over decisions or inactions over disputed assessments denoted therein never became operative. For this reason, [the taxpayer] misguidedly used said provision in its chase of an appeal before us.
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> What then is the correct remedy?
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> [The taxpayer] should have challenged the PCL and FNBS directly before the CTA, under the premise that it did *not* receive the BIR's FAN from which the collection letters were based....

Ergo, petitioner cannot be faulted from directly appealing the WDL it received on November 9, 2020, due to alleged non-receipt of the FLD/FAN from which it is anchored.

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[12] Paragraphs 19, 26-31, Petition for Review. Docket, pp. 15, and 19-22 respectively.

[13] *Encore Receivable Management, Inc. v. Commissioner of Internal Revenue,* CTA Case No. 10062, December 6, 2023 (Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan, concurring).

FOR THESE REASONS, I VOTE to declare that the Court of Tax Appeals in Division acquired jurisdiction over CTA Case No. 10419.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice