REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2868** (CTA Case No. 11187)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
OPAL PORTFOLIO INVESTMENTS [FISTC-AMC (ASSET MANAGEMENT COMPANY)], INC. Formerly Opal Investments (SPV-AMC), Inc., *Respondent.*	Promulgated: MAR 3 1 2025 2:39 p.m.

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D E C I S I O N

MANAHAN, *J.*:

This case involves a *Petition for Review* ("***Petition***") filed by the Commissioner of Internal Revenue ("**CIR**") on March 4, 2024.[1] The *Petition* seeks that the Court *En Banc* reverse the following resolutions of the Court in Division:

1.) *Resolution* dated September 28, 2023,[2] which annulled and set aside the *Warrant of Distraint and/or Levy* ("WDL") dated May 10, 2023 and *Warrant of Garnishment* ("WOG") dated May 15, 2023 issued by petitioner

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[1] Docket, pp. 8-31.
[2] *Id.*, pp. 37-48.

against respondent Opal Portfolio Investments [FISTC-AMC (Asset Management Company)], Inc. ("**Opal**"); and

2.) *Resolution* dated January 30, 2024,[3] which denied petitioner's *Motion for Reconsideration (Re: Resolution Promulgated on 28 September 2023)* filed on October 20, 2023 for lack of merit.

The antecedent facts, as found by the Court in Division, are as follows:[4]

> On 13 June 2023, [Opal] filed a [petition] challenging the validity of [the CIR]'s issuance of a Warrant of Distraint and/or Levy (**WDL**) and Warrant of Garnishment (**WOG**) against [Opal] (**collectively referred to as the "assailed warrants"**).
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> On 04 July 2023, [Opal] also filed a Verified Motion for Issuance of Preliminary Injunction. On 11 July 2023, a hearing on the said motion was conducted with the Court treating the same as Motion for Suspension of the Collection of Taxes (**Motion to Suspend**).
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> During the hearing of 11 July 2023, only [Opal]'s counsel appeared and proceeded to call to the witness stand Rommel Villanueva (**Villanueva**), [Opal]'s accountant.
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> In his testimony, Villanueva alleged that the assailed warrants were issued in violation of [Opal]'s right to due process considering that [the CIR] has yet to promulgate any decision on [Opal]'s administrative protest of the Formal Letter of Demand (**FLD**). Without a decision on its protest, Villanueva stated that the assessment against [Opal] is not yet final and executory to warrant the institution of collection remedies such as the assailed warrants.
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> On the grounds testified on, [Opal] thus prayed that the collection of the taxes subject of the assailed warrants be suspended without need of posting a bond.

[3] *Id.*, pp. 50-54.
[4] *Resolution* dated September 28, 2023, Docket, pp. 37-39.

> A review of the petition shows that [Opal] alleges receipt of a Preliminary Assessment Notice (**PAN**) signed by the Assistant Commissioner for (*sic*) Internal Revenue of the Large Taxpayers Service (**ACIR-LTS**) on 08 March 2022. On 19 May 2022, [Opal] received a Final Assessment Notice (**FAN**) and FLD signed by the Deputy Commissioner of Internal Revenue (**DCIR**) of Operations. On 31 May 2022, it filed a protest to the FAN addressed to the ACIR-LTS. In an undated Letter, the protest was rejected or denied. [Opal] received the Letter-Denial on 09 August 2022.
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> Later, [Opal] filed a protest against the FLD/FAN, but the same was addressed to the ACIR-LTS instead of the DCIR of Operations who issued the FLD/FAN. Still later, the ACIR-LTS denied [Opal]'s protest of the FLD/FAN stating that he had lost jurisdiction over the case after the latter filed the protest with the wrong office.
>
> Aggrieved, [Opal] filed a Request for Reconsideration before [the CIR] who, as of this date, has not acted thereon. While the case is pending before [the CIR], [Opal] received the assailed warrants from the ACIR-LTS (now subject of this present case).[5]

The Court in Division observed that Opal's petition, which was styled as an ordinary appeal, appears to invoke Court's jurisdiction over "other matters" pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282. However, such appellate jurisdiction of the Court is limited to inactions by the CIR where the Tax Code provides a specific period of action. Hence, the Court in Division held that it can only consider the assailed warrants as "other matters" falling within its jurisdiction under Section 7(a)(1) of the same provision if such warrants can be construed as the CIR's "final decision." Such is not the case at bar.

Nonetheless, the Court in Division held that it is not without jurisdiction to grant the relief sought. Jurisprudence affirms that the Court has exclusive jurisdiction to resolve all tax problems and may determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction in the implementation of tax laws. The Court in Division therefore

[5] *Emphasis in the original, citations omitted.*

treated Opal's petition as a petition for *certiorari* upon finding that the allegations depict arbitrariness and excess of jurisdiction of the Bureau of Internal Revenue ("**BIR**"). Going into the merits of the petition, the Court in Division ruled that the assailed warrants were unlawfully issued in the absence of the CIR's decision on Opal's *Request for Reconsideration.*

The CIR now challenges the Court in Division's ruling based on the following four (4) assignments of error.

First, the Court in Division erred in assuming jurisdiction since the assessment had already become final and executory due to Opal's failure to file a valid protest against it. Revenue Memorandum Circular ("**RMC**") No. 15-2020 instructs that the protest must be filed with the office of the signatory. Here, Opal filed its protest with the ACIR-LTS instead of the DCIR of Operations who issued the FLD/FAN.[6]

Second, the Court in Division erred in nullifying the assailed warrants despite the finality of the assessment.[7]

Third, even assuming that the Court has jurisdiction, the BIR has the authority under Section 205 of the Tax Code and RMC No. 35-2019 to collect the delinquent taxes subject of the assessment. RMC No. 35-2019 particularly lists "**Unprotested FAN/FLD**" as one of the classes of assessment which have become "final and executory." Since Opal's failure to validly protest the FAN/FLD rendered the assessment final and executory, the BIR properly issued the assailed warrants to collect the delinquent taxes arising therefrom.[8]

Fourth, the Court in Division erred in treating Opal's petition as a petition for *certiorari* instead of an appeal under Section 228 of the Tax Code. The assailed warrants "are already the final decision of the petitioner BIR as regards [Opal's] assessment."[9] In instances when the CIR, without categorically deciding the taxpayer's protest or request for reconsideration, proceeds with distraint or levy, the latter has been considered as an implied denial.[10]

[6] *Petition for Review*, Docket, pp. 13-17.
[7] *Id.*, pp. 17-21.
[8] *Id.*, pp. 21-23.
[9] *Id.*, p. 25, Par. 3.
[10] *Id.*, pp. 23-27.

RULING OF THE COURT *EN BANC*

The resolution of the first three issues raised in the present *Petition* primarily hinges on whether the assessment has already become final and executory. Petitioner assumes that since it already has, then the Court is now divested of jurisdiction and the issuance of the assailed warrants is proper.

The Court finds otherwise.

The assessment is not final and executory due to the pendency of an administrative appeal; Opal timely and validly protested the FAN/FLD assessment at the administrative level.

Section 228 of the Tax Code grants a taxpayer the period of thirty (30) days within which to protest a tax assessment, by way of a request for reconsideration or reinvestigation, in such manner and form as may be prescribed by implementing rules and regulations. If a request for reconsideration is denied by the CIR's authorized representative, Revenue Regulations (RR) No. 18-2023[11] provides two remedies: *first*, to appeal the denial to the Court of Tax Appeals ("CTA") within thirty (30) days from its receipt; or *second*, to elevate the same to the CIR within the same period.

In the instant case, Opal received the FAN/FLD on May 19, 2022.[12] On May 31, 2022, within 30 days, it filed a request for reconsideration.[13] Then, on August 9, 2022, Opal received the letter from the ACIR-LTS denying its request on the ground that it was filed with the wrong office.[14] In accordance with RR No. 18-2023, Opal elevated its protest to the CIR on August 15,

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[11] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
[12] Division Docket, pp. 38-49.
[13] *Id.*, pp. 50-70.
[14] *Id.*, pp. 71-72.

2022.[15] Evidently, Opal properly and timely availed of the administrative remedies provided by law.

The Court cannot subscribe to the position that the filing of the protest to the FAN/FLD by way of a request for reconsideration with the ACIR-LTS, instead of with the DCIR of Operations, constituted an invalid protest which is equivalent to a lack of protest resulting in a final, executory, and demandable assessment. Contrary to petitioner's postulation, such is not the express directive of RMC No. 15-2020, the relevant portion of which states:

> **C. Filing of Administrative Protest**
>
> **C.1 Filing of Administrative Protest with the Regional Director/Assistant Commissioner or Authorized Higher Revenue Official**
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> The protest on the FLD/FAN must be addressed to ***Assistant Commissioner/Regional Director or Authorized Higher Revenue Official*** and filed with the ***office of the concerned aforementioned Revenue Official (Office that issued the FLD/FAN)*** for proper recording and evaluation of your protest to determine if it is filed in accordance with Section 228 of the National Internal Revenue Code of 1997, as amended, and its implementing rules and regulations.

While the above guidelines prescribe the venue of the protest, it should not be understood to be jurisdictional such that failure to comply therewith would deprive the taxpayer of the right to appeal. Venue is fixed simply for convenience and the effective transaction of business. It does not restrict the taxpayer's statutory remedies.[16]

Jurisdiction, on the other hand, is conferred by no other source than law.[17] Section 4 of the Tax Code provides for the CIR's jurisdiction over disputed assessments, *viz*:

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[15] *Id.*, pp. 73-97.
[16] *Odilao v. Union Bank of the Philippines*, G.R. No. 254787, April 26, 2023 [Per J. Dimaampao, Third Division].
[17] *Philippine National Bank v. Tejano*, Jr., G.R. No. 173615, October 16, 2009 [Per J. Peralta, En Banc].

> **SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
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> 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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Meanwhile, pursuant to Section 7 of the Tax Code, the CIR "may delegate the powers vested in him [or her]... to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations..." The ACIR-LTS is one such subordinate official authorized to issue and act on protests to an assessment. RMC No. 15-2020 itself recognizes such authority:

> **C. Filing of Administrative Protest**
>
> **C.1 Filing of Administrative Protest with the Regional Director/Assistant Commissioner or Authorized Higher Revenue Official**
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> ...
>
> You must state in your written protest the following:
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> 1) Date of the assessment notice;
> 2) The nature of the protest, whether reconsideration or reinvestigation. If it is reinvestigation, specify the newly discovered or additional evidence you intend to present, which <u>should be submitted within sixty (60) days from the date of filing of your request for reinvestigation</u>; and
> 3) Applicable law, rules and regulations or jurisprudence on which the protest is based.

> Your protest shall be considered void and without force and effect without the aforementioned information/condition.
>
> In case you fail to file a valid protest against the FLD/FAN within the thirty (30)-day period, the deficiency tax assessment shall become final, executory and demandable, and no request for reconsideration or reinvestigation shall be granted after the said period.
>
> The ***Assistant Commissioner/Regional Director or Authorized Higher Revenue Official*** shall issue a Final Decision on Disputed Assessment (FDDA) on your protest which shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which the decision is based, and (ii) that the same is his final decision.

That the ACIR-LTS is vested with the delegated power to make an assessment and decide protests thereto is bolstered by the fact that it was the ACIR-LTS who authorized the audit and examination of the taxpayer in this case. It was the one who issued the Letter of Authority and the PAN, and although the signatory in the FLD/FAN is the DCIR of Operations, the document itself indicates "Large Taxpayers Service."[18] Nothing in RMC No. 15-2020 divests the ACIR-LTS of this delegated power. Moreover, it is an established rule that once jurisdiction is acquired, it continues until the case is finally terminated.[19]

Thus, considering the CIR's inaction on Opal's appeal from the denial of its protest to the FLD/FAN, Section 228 of the Tax Code further grants the following judicial remedy:

> **SEC. 228. *Protesting of Assessment.*** - ...
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> ...
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may ***appeal to the Court of Tax Appeals within thirty (30) days*** from ***receipt of the said decision***, or from

[18] Division Docket, p. 38.
[19] *Philippine National Bank v. Tejano, Jr.*, G.R. No. 173615, October 16, 2009 [Per J. Peralta, En Banc].

> ***the lapse of one hundred eighty (180)-day period***; otherwise, the decision shall become final, executory and demandable.

Jurisprudence outlines the two distinct ways by which a taxpayer may avail of the judicial remedy provided for by Section 228:

1. By filing an appeal with the CTA within thirty (30) days from the lapse of one hundred eighty (180) days without the CIR's action; and
2. By awaiting the CIR's final decision, then appealing it to the CTA within thirty (30) days from receipt.[20]

These two options are mutually exclusive, and resort to one bars the application of the other.[21]

In this case, the records positively establish that the taxpayer chose the *second* option. It opted to await the CIR's final decision, as expressly indicated in its petition before the Court in Division:[22]

> 3. This petition is in the nature of an appeal questioning the validity of the issuance of Warrant of Distraint/Levy (WDL) which was received by Petitioner last May 15, 2023 and a Warrant of Garnishment which was received on May 23, 2023 ; all these, ***while awaiting the action of the Commissioner on the Administrative Appeal by way of Request for Reconsideration filed on August 15, 2022***; that this petition is being filed pursuant to Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

The Court therefore cannot consider the assessment to be final and executory *pending the CIR's action on its appeal,* since this will negate the taxpayer's option—as enshrined in Section 228 and recognized by jurisprudence—to await the CIR's final decision. Following the Supreme Court's ruling in *Light Rail Transit Authority v. Bureau of Internal Revenue* ("***LRTA***"):[23]

[20] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 171251, March 05, 2012 [Per J. Peralta, Third Division].
[21] *Id.*
[22] Division Docket, p. 8. *Emphasis supplied, citation omitted.*
[23] G.R. No. 231238, June 20, 2022 [Per J. Leonen, Second Division]. *Emphasis supplied.*

> Here, there was inaction on the part of the [CIR] on the petitioner's appeal of the Final Decision on a Disputed Assessment...
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> ...
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> Contrary to the ruling of the Court of Tax Appeals *En Banc*, the Final Decision on Disputed Assessment cannot be considered as the decision appealable to the Court of Tax Appeals... ***This interpretation will render nugatory the remedy of appeal to the Office of the Commissioner of Internal Revenue of the denial of protest issued by his or her duly authorized representative***, a remedy which was properly and timely availed of by petitioner.

Having established that the assessment is not final and executory, the Court shall now address petitioner's fourth assignment of error, *i.e.* whether a petition for *certiorari* is an improper remedy against the assailed warrants issued during the pendency of an administrative appeal.

The CTA has certiorari jurisdiction over "other matters" arising under the Tax Code and laws administered by the BIR including the issuance of warrants of distraint and/or levy or other act of summary collection

At the outset, the Court notes that petitioner's argument that the assailed warrants "are already the final decision of the petitioner"[24] contradicts its position that the FLD/FAN already attained finality and is therefore no longer appealable to this Court. If the assailed warrants are to be considered as the CIR's final decision, then respondent Opal correctly appealed to this Court within thirty (30) days from receipt thereof.

Indeed, earlier jurisprudence had considered warrants of distraint and/or levy as equivalent to the CIR's "final decision" on the assessment. *Commissioner of Internal Revenue v. Algue,*

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[24] *Supra*, note 11.

Inc. and The Court of Tax Appeals ("***Algue***")[25] articulated the general rule that:

> It is true that as a rule the warrant of distraint and levy is "proof of the finality of the assessment" and renders hopeless a request for reconsideration, being "tantamount to an outright denial thereof and makes the said request deemed rejected."

Algue, however, also declared that the above rule does not apply when the warrant of distraint and/or levy *failed to take into account a valid protest to the assessment.* It held:

> The proven fact is that four days after the [taxpayer] received the [BIR's] notice of assessment, it filed its letter of protest. This was apparently not taken into account before the warrant of distraint and levy was issued; indeed, such protest could not be located in the office of the [BIR]. It was only after Atty. Guevara gave the BIR a copy of the protest that it was, if at all, considered by the tax authorities. During the intervening period, the warrant was premature and could therefore not be served.[26]

Later jurisprudence also clarified that the warrant, by itself, is not equivalent to the CIR's "final decision" unless it is categorically stated that the taxpayer's protest is denied. In *Commissioner of Internal Revenue v. Union Shipping Corporation and The Court of Tax Appeals* ("***Union Shipping***"),[27] the Supreme Court directed that the CIR "should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment." It held:

> There appears to be no dispute that [the CIR] did not rule on [the taxpayer's] motion for reconsideration... Had he categorically stated that he denies [the taxpayer's] motion for reconsideration and that his action constitutes his final determination on the disputed assessment, [the taxpayer] would have been able to determine when his right to appeal accrues and the resulting confusion would have been avoided.

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[25] G.R. No. 28896, February 17, 1988 [Per J. Cruz, First Division]. *Citations omitted.*
[26] *Id. Citations omitted.*
[27] G.R. No. 66160, May 21, 1990 [Per J. Paras, Second Division].

> ... ***the reviewable decision of the Bureau of Internal Revenue is that contained in the letter of its Commissioner, that such constitutes the final decision on the matter which may be appealed to the Court of Tax Appeals and not the warrants of distraint*** ...
>
> Under the circumstances, the [CIR], not having clearly signified his final action on the disputed assessment, legally the period to appeal has not commenced to run ...[28]

Thus, the rule that the warrant of distraint and/or levy or other act of collection shall be considered as the CIR's "final decision" does *not* apply where: 1.) it disregarded a valid protest lodged by the taxpayer; and 2.) it does not indicate in clear and unequivocal terms that it is the final decision.

Proceeding from the above doctrine, the Supreme Court in *Commissioner of Internal Revenue v. Isabela Cultural Corporation* ("***Isabela Cultural***")[29] treated the BIR's Final Notice Before Seizure as a "final decision" that is appealable within 30 days to this Court not simply because it signals an act of collection but because the wording of the issuance clearly expressed a categorical denial of the taxpayer's protest. The Supreme Court explained:

> In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the [CIR's] decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; ***its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration***. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.[30]

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[28] *Emphasis supplied, citations omitted.*
[29] G.R. No. 135210, July 11, 2001 [Per J. Panganiban, Third Division].
[30] *Emphasis supplied.*

Post-Isabela Cultural: The issuance of a warrant of distraint and/ or levy, or other act of summary collection, as an "other matter" arising under the Tax Code

There are two legal developments after *Isabela Cultural* that further preclude the immediate treatment of a warrant of distraint and/or levy or other act of summary collection as the CIR's "final decision."[31]

First, Section 7 of RA No. 1125[32] was amended by RA No. 9282[33] ("**CTA Charter**") to include *inaction* as a *deemed denial* which is appealable to the Court, *viz*:

> "**SEC. 7. *Jurisdiction***. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ...
>
> 2. ***Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments***... or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, ***in which case the inaction shall be deemed a denial***;"[34]

Second, the Supreme Court promulgated *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue* ("***RCBC***")[35] and *Lascona Land Co., Inc. v.*

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[31] *See LRTA*.
[32] AN ACT CREATING THE COURT OF TAX APPEALS (1954).
[33] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES (2004).
[34] *Emphasis supplied*.
[35] G.R. No. 168498, April 24, 2007 (Resolution) [Per J. Ynares-Santiago, Third Division].

Commissioner of Internal Revenue ("**Lascona Land**"),[36] which clarified that the taxpayer may still await the CIR's final decision *even after the lapse of the one hundred eighty (180)-day period to issue the same.*

It is on the premise of these developments that *LRTA* treated the BIR Regional Director's letter denying the taxpayer's appeal to the CIR as the "final decision," *despite prior issuance* of a preliminary collection letter, final notice before seizure, and warrant of distraint and/or levy. Similarly, in the more recent case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue* ("***Mannasoft***"),[37] the Supreme Court refused to reckon the thirty (30)-day period to file a judicial appeal from receipt of the warrant of distraint and/or levy ("WDL") *due to a pending administrative appeal*, thus:

> In the impugned Decision, the [Court of Tax Appeals (CTA)] *En Banc* granted [the CIR's] appeal... It held that in accordance with prevailing jurisprudence, the proper reckoning point to invoke the jurisdiction of the tax court was from petitioner's receipt of the WDL. Considering that petitioner failed to seek judicial relief within the thirty (30)-day period provided by law, the WDL attained finality which, in turn, deprived the CTA of jurisdiction to act on petitioner's original petition for review...
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> ...
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> As adumbrated above, petitioner timely filed its protest to the FAN and submitted its supporting documents thereto on February 20, 2012. From this date, the 180-day period began to run. Undoubtedly, when respondent issued the WDL on October 23, 2012, the one hundred eighty (180)-day period had already lapsed. Nonetheless, ***petitioner's immediate letter-protest to the WDL on October 29, 2012 made it perfectly clear that it was awaiting respondent's action on its request for reinvestigation. This is an express indication that petitioner was opting for the second recourse provided in RCBC in response to respondent's inaction to its protest.*** This is again apparent in petitioner's subsequent letter dated

[36] G.R. No. 171251, March 05, 2012 [Per J. Peralta, Third Division].
[37] G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

> November 13, 2012, which reiterated its appeal for reinvestigation.
>
> ***When respondent finally replied to petitioner in the letter dated November 14, 2013, denying its request for reinvestigation, the response constituted the final decision on the disputed assessment, which was appealable to the CTA in accordance with the remedies espoused in RCBC.*** It is not amiss to add that in actual fact, the letter-reply explicitly stated that it "constitutes [the BIR's] final decision on the matter."

What is apparent from the foregoing is that if the circumstances indicate that the taxpayer opted to wait for the CIR's final decision, the WDL cannot be construed as the denial of its protest which triggers the thirty (30)-day jurisdictional period to appeal to the CTA. Otherwise, it will negate the taxpayer's option to wait.

For purposes, therefore, of determining the Court's jurisdiction and the appropriate judicial remedy, it becomes necessary to distinguish between a WDL which constitutes a final denial of the taxpayer's protest to the assessment, and a WDL which does not.

A WDL which constitutes the CIR's "final decision"—*i.e.* one which properly considered and categorically denied the taxpayer's protest pursuant to *Algue*, *Union Shipping*, and *Isabela Cultural*—is reviewable by appeal to this Court because it is essentially the "decision" contemplated by Section 7(a)(1) of the CTA Charter:

> "**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;"[38]

Failure to timely appeal the "decision" on the assessment (*i.e.* the WDL) results in the assessment itself becoming final, executory, and demandable—thereby divesting the Court of the jurisdiction to review the correctness thereof.[39]

On the other hand, where the WDL does *not* constitute a constructive denial of the protest to the assessment, **such as in the present case where the taxpayer opted to await the CIR's final decision**, then the WDL is generally not reviewable by ordinary appeal under Section 7(a)(1) of the CTA Charter precisely because *there is no final decision yet* that the appellate court can re-examine or review.

An appeal presupposes that there is a decision—that is, a final judgment or order that "completely disposes" of a case or particular matter.[40] In this second scenario, while the WDL seeks to collect the taxes subject of the assessment, it does not dispose of the matter of the validity or correctness of the assessment itself *on which the very collection is based.* This means that any amounts collected by virtue of such WDL remains *provisional* until the CIR determines the merits of the assessment and decides, with finality, that the assessment (and consequently the amount collected) should be upheld, cancelled, or modified.

Considering that the WDL under this second scenario is not *per se* a decision on the merits and still leaves something to be decided by the CIR, then it is in the nature of an "interlocutory" order. *Integrated Credit and Corporate Services, Co. v. Novelita Labrador*[41] enunciated the difference between an interlocutory order and a final order, and the proper remedy against each:

> Thus, the main difference between an interlocutory order and a final order is that a final order disposes of a case, an interlocutory order, on

[38] *Emphasis supplied.*
[39] *See generally Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.,* G.R. No. 225809, March 17, 2021 [Per J. Leonen, Third Division].
[40] *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited,* G.R. Nos. 203054-55, July 29, 2015 [Per J. Peralta, Third Division].
[41] G.R. No. 233127, July 10, 2023 [Per C.J. Gesmundo, First Division].

> the other hand, does not dispose of a case and does not end the court's task of adjudicating the parties' contentions. ***The test to determine whether an order or a judgment is interlocutory or final is: Does the order or judgment leave something to be done in the trial court regarding the merits of the case?*** If it does, the order or judgment is interlocutory; otherwise, it is final
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> ...
>
> To reiterate, an order is "interlocutory when it does not dispose of the case completely but leaves something to still be decided by the trial court." ... There is still a need for further proceedings to determine the respective rights of the parties involved.
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> ...
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> Based on the foregoing, it is clear that no appeal may be taken from an interlocutory order issued by the RTC. ***The remedy against an interlocutory order is a special civil action for certiorari under Rule 65 of the Rules of Court, but only when there is grave abuse of discretion.*** A petition for *certiorari* is an extraordinary remedy availed of when a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his or her jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Likewise, the Court has previously declared that an appeal and a petition for *certiorari* are two different remedies, which are not interchangeable. Remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.

The reason of the law in permitting an appeal only from a final judgment or order is to avoid multiplicity of appeals in a single action.[42] If the merits can be decided by appealing the WDL, then multiplicity of appeals will certainly result if the CIR subsequently issues the final decision and the taxpayer, taking cue from *RCBC*, *Lascona*, *LRTA*, and *Mannasoft*, appeals the same to the Court within thirty (30) days.

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[42] *Sitchon v. The Provincial Sheriff of Occidental Negros*, G.R. No. L-1853, February 27, 1948 [Per J. Feria, En Banc].

In view thereof, the proper remedy against the WDL which is *not* the CIR's final decision is a special civil action for *certiorari* under Rule 65 of the Rules of Court. Although Section 7 of the CTA Charter does not expressly grant the Court *certiorari* jurisdiction, referring only to "appellate jurisdiction," jurisprudence affirms that the latter "carries with it the power to issue a writ of *certiorari* when necessary *in aid of such appellate jurisdiction.*"[43] The seminal case of *The City of Manila v. Hon. Caridad H. Grecia-Cuerdo* is instructive:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. ***The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction.*** For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.
>
> ...
>
> ... *Hence,* ***demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter,*** even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.
>
> Based on the foregoing disquisitions, it can be reasonably concluded that ***the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.***[44]

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[43] *The City of Manila v. Hon. Caridad H. Grecia-Cuerdo*, G.R. No. 175723, February 04, 2014 [Per J. Peralta, En Banc].

[44] *Id., Citations omitted, Emphasis supplied.*

Considering that the Court has *appellate* jurisdiction over "decisions" on tax assessments and other matters arising under tax laws, it follows that the Court has *certiorari* power over all other matters ancillary and incidental thereto, such as the summary collection of the taxes which are the subject of the assessment.

Having established the Court's *certiorari* jurisdiction over the present case, we shall now proceed to determine whether the Court in Division erred in finding that grave abuse of discretion amounting to lack or excess of jurisdiction attended the issuance of the assailed warrants.

The summary collection of taxes pending an administrative protest is void

There is grave abuse of discretion amounting to lack or excess of jurisdiction when an act is: 1.) done contrary to the Constitution, the law, and jurisprudence; or 2.) executed whimsically, capriciously, or arbitrarily.[45] Here, the Court in Division found:

> Owing to the fact that there is a pending appeal before the CIR, the ACIR-LTS' action of issuing the assailed warrants was clearly beyond his or her authority to do. In a way, by issuing the assailed warrants, the ACIR-LTS preempted the CIR's decision by considering his or her decision on the protest to the FLD/FAN final and executory. This is clearly one of the situations sought to be avoided in *LRTA*. Verily, in this situation, following the case of *LRTA*, the taxpayer has the right to await the CIR's action on its Request for Reconsideration. The issuance of the assailed warrants not only deprives petitioner of this right but, it also denies the CIR the opportunity to make his or her own decision or to correct any errors of his or her subordinates.
>
> Obviously, the ACIR-LTS' issuance of the assailed warrants was not only done in excess of his or her jurisdiction but whatever semblance of authority the former had was arbitrarily wielded when it sought to

[45] *Ocampo v. Enriquez*, G.R. No. 225973, November 08, 2016 [Per J. Peralta, En Banc].

> supplant his or her decision in place of a superior officer in the person of the CIR. In effect, to sustain the ACIR-LTS' action will be a direct abrogation of the settled administrative processes ordained in the laws; the NIRC of 1997, as amended, in particular, and the constitutional precepts of due process, in general.

We agree with the Court in Division.

Sections 205 and 207 of the Tax Code, in particular, governs the summary collection of taxes by means of distraint or levy:

> **SEC. 205.** ***Remedies for the Collection of Delinquent Taxes.*** – The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto ***resulting from delinquency*** shall be:
>
> (a) By distraint of goods... and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property;[46] x x x
>
> **SEC. 207. Summary Remedies. –**
>
> **(A)** ***Distraint of Personal Property.*** – Upon the failure of the person owing any ***delinquent*** tax or ***delinquent*** revenue to pay the same at the time required, the Commissioner or his duly authorized representative... shall seize and distraint any goods, chattels or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons ***in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency,*** and the expenses of the distraint and the cost of the subsequent sale.
>
> x x x
>
> **(B)** ***Levy on Real Property.*** – After the expiration of the time required to pay the ***delinquent***

[46] *Emphasis supplied.*

> tax or ***delinquent*** revenue... real property may be levied upon, before, simultaneously or after the distraint of personal property...[47]

In *Mannasoft*, the Supreme Court emphasized the above statutory requirement that the issuance of the WDL must be premised on the existence of delinquent taxes:

> It should also be 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, as in the case at bench.[48]

Meanwhile, in *LRTA*, the Supreme Court invalidated the WDL and related issuances on the ground that they emanated from a non-demandable assessment which did not give rise to delinquent taxes:

> ...the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy... Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, ***all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made.*** The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy... ***all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.***[49]

Similarly, in the present case, there is still a pending appeal with the CIR when the assailed warrants were issued.

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[47] *Emphasis supplied.*
[48] *Emphasis supplied.*
[49] *Emphasis supplied.*

Applying *LRTA*, the Court is constrained to declare the assailed warrants void for not being based on a demandable assessment and seeking to collect taxes which are not yet delinquent.

Due process demands that tax collection be preceded by a demandable assessment. This entails that the taxpayer be given full opportunity to be informed of the factual and legal bases of the assessment, to protest and have its evidence considered, and to avail of the right to appeal in the manner and within the period prescribed by law. Without a demandable assessment resulting in delinquent taxes, the BIR cannot resort to summary collection remedies. Such act of tax collection is not only premature and without legal basis; it is also violative of the due process requirements under Section 228 of the Tax Code and pertinent regulations.

ACCORDINGLY, the instant *Petition for Review* filed on March 4, 2024 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

ROMAN G. DEL ROSARIO
Presiding Justice