REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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RUEL E. ORDUÑA, formerly doing business under the name and style, GRUPO ENTABLADO STAGE BUILDERS,	**CTA Case No. 9619**
	Members:
Petitioner,	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE,	***Promulgated:***
Respondent.	MAR 16 2021 10:46 a.m.

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DECISION

UY, *J*.:

Before this Court is a *Petition for Review*[1] filed on June 21, 2017, by petitioner Ruel E. Orduña, *formerly doing business under the name and style*, Grupo Entablado Stage Builders, praying that the Warrant of Distraint and/or Levy (WDL) dated November 7, 2016 and the assessments for alleged deficiency taxes in the aggregate amount of ₱10,962,817.48 for taxable year (TY) 2012, be lifted and set aside.

THE FACTS

Petitioner is formerly doing business under the name and style of Grupo Entablado Stage Builders, duly registered with the Bureau of Internal Revenue (BIR) since 1997 under TIN 131-971-938-000,

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[1] Docket, pp. 10 to 16.

and with the Department of Trade and Industry until the cancellation of the said Business Name on September 5, 2016; and with principal address at No. 40 M.H. Del Pilar, Pinagbuhatan, Pasig City, Philippines[2].

Respondent is the Commissioner of Internal Revenue (CIR), who is the head of the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes[3].

On October 31, 2013, BIR Revenue Region No. 7 (RR 7), Revenue District No. 43B-West Pasig issued Letter of Authority No. 43B-2013-00000702[4] dated October 31, 2013, authorizing Revenue Officer (RO) Genaro Guevarra and Group Supervisor (GS) Onofre De Guzman to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax (DST) and other taxes for the period January 1, 2012 to December 31, 2012.

On December 21, 2015, respondent through Regional Director (RD) Alfredo V. Misajon of RR 7 issued the *Preliminary Assessment Notice (PAN)*[5] with *Details of Discrepancies*[6] on December 17, 2015, assessing petitioner for deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT), including increments for TY 2012 in the aggregate amount of ₱10,844,379.91.

On January 11, 2016, respondent through RD Alfredo V. Misajon, issued the *Formal Letter of Demand* (FLD)[7] with *Assessment Notices* (FAN)[8] and *Details of Discrepancies,*[9] assessing petitioner for deficiency income tax, VAT and EWT including increments for TY 2012 in the aggregate amount of ₱10,962,817.48, broken down as follows:

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[2] *Summary of Admitted Facts and Proposed Stipulation of Facts*, JSFI, Docket, p. 174.
[3] *Summary of Admitted Facts and Proposed Stipulation of Facts*, JSFI, Docket, p. 174.
[4] Exhibit "R-2", BIR Records, p. 3.
[5] Exhibit "R-7", BIR Records, pp. 314 to 315.
[6] Exhibit "R-7-a", BIR Records, pp. 310 to 313.
[7] Exhibit "R-12", BIR Records, pp. 342 to 343.
[8] Exhibits "R-9", "R-10" and "R-11", BIR Records, pp. 344 to 346.
[9] Exhibit "R-12-a", BIR Records, pp. 338 to 341.

Tax Type	Total
Income Tax	₱ 9,274,250.88
Value-Added Tax	1,244,768.52
Expanded Withholding Tax	443,798.08
	₱ 10,962,817.48

On June 1, 2016, respondent through Chief of Collection Division, Alice S.A. Gonzales, issued the *Final Notice Before Seizure* (FNBS)[10] against the petitioner requesting the settlement of the following tax liabilities:

Assessment #		Basic Tax Due	Interest	Total
043B-B073-12	IT	₱5,924,223.96	₱3,350,026.92	₱9,274,250.88
043B-B073-12	VT	773,477.20	471,291.32	1,244,768.52
043B-B073-12	WE	274,832.54	168,965.54	443,798.08
			TOTAL	**₱10,962,817.48**

On August 10, 2016, petitioner filed a *Reply Letter*[11] dated August 10, 2016, stating that he is not aware of any tax liability or tax audit for TY 2012; and denying the receipt of the Assessment/Demand Letter indicated in the FNBS.

On November 7, 2016, respondent through Chief of Collection Division, Alice S.A. Gonzales, issued the subject WDL No. RR7-2016-10-24-895[12] in view of petitioner's alleged failure and refusal to pay the subject deficiency taxes for TY 2012.

On November 8, 2016, petitioner filed a *Letter Reply*[13], appealing for the immediate lifting and withdrawal of the WDL and reiterating that he did not receive the assessment notice covering deficiency taxes for TY 2012.

Thereafter, on June 21, 2017, petitioner filed the instant *Petition for Review*[14].

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[10] Exhibit "P-3", Docket, p. 19; BIR Records, p. 364.
[11] Exhibit "P-4", Docket, p. 20; BIR Records, pp. 379 to 380.
[12] Exhibit "P-6", Docket, p. 27.
[13] Exhibit "P-7", Docket, pp. 28 to 30.
[14] Docket, pp. 10 to 16.

Respondent filed his *Answer*[15] on August 29, 2017, interposing, among others, the following special and affirmative defenses: the Court has no jurisdiction to take cognizance of the instant Petition on the ground that the subject assessment had already become final, executory and demandable for petitioner's failure to file an administrative protest to the FLD/FAN. According to respondent, an assessment must first be disputed by the taxpayer and ruled by the CIR to warrant a decision appealable to the CTA. Further, respondent argues that the due process requirement in the issuance of deficiency tax assessment against petitioner was strictly observed.

After the Pre-Trial Conference held on February 13, 2018,[16] the parties submitted their *JSFI*[17] on March 15, 2018. Subsequently, the Court issued its *Pre-Trial Order* on April 17, 2018[18].

During trial, petitioner's counsel presented a lone witness, petitioner himself, Ruel E. Orduña[19].

Thereafter, petitioner filed his *Formal Offer of Documentary Exhibits*[20] on May 30, 2018. On June 13, 2018, a *Records Verification Report*[21] was issued by the Judicial Records Division of this Court stating that respondent failed to file his comment on petitioner's *Formal Offer of Documentary Exhibits*.

In the Resolution[22] dated August 6, 2018, the Court admitted all of petitioner's exhibits except Exhibits "P-8", "P-8-1", "P-8-2", "P-8-3", and "P-8-4", for failure to submit the duly marked exhibits.

On September 5, 2018, petitioner filed a *Motion for Partial Reconsideration (Re: Resolution promulgated on 06 August 2018)*[23] stating that he inadvertently attached the duly marked exhibits to his file copy instead of attaching the same to the *Formal Offer of Documentary Exhibits*; and submitting the duly marked original copy of Exhibits "P-8", "P-8-1", "P-8-2", "P-8-3", and "P-8-4".

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[15] Docket, pp. 39 to 47.
[16] *Minutes of Hearing held on February 13, 2018*, Docket, p. 158.
[17] JSFI, Docket, pp. 174 to 179.
[18] Docket, pp. 181 to 187.
[19] Exhibit "P-8", Docket, pp. 232 to 240.
[20] Docket, pp. 190 to 193.
[21] Docket, p. 223.
[22] Docket, pp. 225 to 226.
[23] Docket, pp. 228 to 231.

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On October 10, 2018, a *Records Verification Report*[24] was issued by the Judicial Records Division of this Court stating that respondent failed to file his comment on petitioner's *Motion for Partial Reconsideration (Re: Resolution promulgated on 06 August 2018).*

In the Resolution[25] dated January 22, 2019, the Court granted petitioner's *Motion for Partial Reconsideration (Re: Resolution promulgated on 06 August 2018);* and admitted Exhibits "P-8", "P-8-1", "P-8-2", "P-8-3", and "P-8-4".

Thereafter, respondent presented the following witnesses: (1) RO Genaro S. Guevarra;[26] and (2) RO Ace Steven A. Hermosilla[27].

On July 11, 2019, respondent filed his *Formal Offer of Evidence*[28]. On August 5, 2019, petitioner filed his *Comment/ Opposition (Re: Respondent's Formal Offer of Evidence).*[29] In the *Resolution*[30] dated September 13, 2019, the Court admitted all of respondent's evidence.

Meanwhile, as moved by petitioner's counsel during the hearing held on June 26, 2019, petitioner was allowed to present rebuttal evidence regarding the fact of receipt of the assessment notices.[31] Hence, petitioner presented witness Sherry Anne D. Aragon[32], petitioner's Personal Assistant and Secretary, during the hearing held on November 6, 2019.

On December 2, 2019, petitioner filed his *Formal Offer of Documentary Exhibits on Rebuttal*[33]. On December 19, 2019, a *Records Verification Report*[34] was issued by the Judicial Records Division of this Court stating that respondent failed to file his comment on petitioner's *Formal Offer of Documentary Exhibits on Rebuttal.*

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24 Docket, p. 257.
25 Docket, pp. 271 to 272.
26 Exhibit "R-14", Docket, pp. 101 to 105.
27 Exhibit "R-15, Docket, pp. 115 to 119.
28 Docket, pp. 288 to 296.
29 Docket, pp. 298 to 305.
30 Docket, pp. 307 to 308.
31 Docket, p. 285.
32 Exhibit "P-17", Docket, pp. 313 to 320.
33 Docket, pp. 345 to 349.
34 Docket, p. 418.

In the Resolution[35] dated February 13, 2020, the Court admitted all of petitioner's exhibits; and ordered both parties to file their respective memoranda. Petitioner's *Memorandum*[36] was filed on July 7, 2020, while respondent failed to file his Memorandum as per *Records Verification Report*[37] dated July 13, 2020.

Thus, the instant case was submitted for decision in the *Resolution*[38] dated July 16, 2020. Hence, this Decision.

THE ISSUES

The parties stipulated the following issues[39] for this Court's resolution, *to wit*:

"ISSUES

1. WHETHER OR NOT THE SUBJECT COLLECTION/ ASSESSMENTS AGAINST THE PETITIONER SHOULD BE CANCELLED AND SET ASIDE FOR BEING VOID DUE TO FAILURE OF THE RESPONDENT TO COMPLY WITH THE DUE PROCESS REQUIREMENT AS PRESCRIBED UNDER SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 AND REVENUE REGULATIONS NO. 12-99;

2. WHETHER OR NOT THE WARRANT OF DISTRAINT AND/OR LEVY ISSUED AGAINST THE PETITIONER, IN LINE WITH THE SUBJECT ASSESSMENTS, SHOULD BE CANCELLED AND WITHDRAWN;

3. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF ₱9,274,250.88, DEFICIENCY VALUE ADDED TAX IN THE AMOUNT OF ₱1,244,768.52 AND EXPANDED WITHHOLDING TAX IN THE AMOUNT OF ₱443,798.08 FOR THE TAXABLE YEAR 2012 INCLUSIVE OF INTEREST;

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[35] Docket, pp. 420 to 421.
[36] Docket, pp. 422 to 441.
[37] Docket, p. 443.
[38] Docket, p. 445.
[39] *Issues*, JSFI, Docket, p. 175.

4. WHETHER OR NOT THE ASSESSMENTS ON INCOME TAX AND VALUE ADDED TAX HAVE ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE."

Petitioner's arguments:

Petitioner argues that the subject collection/assessments should be cancelled and set aside for being void in view of respondent's failure to comply with the due process requirement as prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 12-99.

Further, petitioner avers that the WDL should be cancelled and withdrawn. Allegedly, the subject collection bears no valid fruit for being null and void in view of respondent's failure to properly serve the assessment notice.

Petitioner likewise claims that the subject assessment did not become final, executory and demandable. Thus, petitioner insists that he is not liable for the alleged deficiency taxes for TY 2012.

Respondent's counter-arguments:

Respondent counter-argues that the Court has no jurisdiction to take cognizance of the instant *Petition* on the ground that the subject assessment had already become final, executory and demandable. Hence, petitioner is liable for deficiency taxes for TY 2012, inclusive of interest.

It is respondent's position that an assessment must first be disputed by the taxpayer and ruled upon by respondent to warrant a decision which is appealable to the CTA. According to respondent, petitioner failed to dispute the assessment in view of its failure to file an administrative protest.

In addition, respondent posits that the due process requirement under Section 228 of the National Internal Revenue Code of 1997, as amended, was strictly observed.

Respondent likewise contends that the essence of due process is found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.

THE COURT'S RULING

The Court deems it necessary to first resolve the issue of jurisdiction.

The Petition for Review was filed out of time; hence, the Court did not acquire jurisdiction over the present case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[40] The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[41]

Pertinent to the determination of this Court's jurisdiction over the instant case, Section 7 paragraph (a) (1) of Republic Act No. 1125 (RA 1125)[42], as amended by Republic Act No. 9282 (RA 9282), provides as follows:

> "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 <u>other</u> <u>matters</u> arising under the National Internal**

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[40] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. 185666, February 4, 2015, citing *Commissioner of Internal Revenue v. Villa, et al.*, 130 Phil. 3, 4 (1968).

[41] *Commissioner of Internal Revenue v. V.Y. Domingo Jewelers, Inc.*, G.R. No. 221780, March 25, 2019, citing *CIR V. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 146 Phil. 139, 152 (2014).

[42] *An Act Creating the Court of Tax Appeals.*

> **Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis and underscoring supplied.*)

Relative thereto, Section 3 (a) (1), Rule 4 of the Revised Rules of the CTA likewise states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original over 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**;" (*Emphasis and underscoring supplied.)*

Based on the foregoing, the jurisdiction of the CTA is not limited to decisions of the CIR involving disputed assessments, but also includes "***other matters***" arising under the NIRC or other laws administered by the BIR.

In the instant case, what is being appealed by petitioner is the validity of the WDL dated November 7, 2016[43].

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[44] the Supreme Court held that the appellate jurisdiction of the CTA encompasses the determination of whether the WDL issued by the BIR is valid, to wit:

> "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

[43] Exhibit "P-6", Docket, p. 27.
[44] G.R. No. 162852, December 16, 2004.

> 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." (*Emphasis supplied.*)

Based on the foregoing, the determination of the validity of a WDL issued by the BIR, falls within the ambit of this Court's jurisdiction, under the term *"other matters arising under the NIRC or other laws administered by the Bureau of Internal Revenue."*

However, while this Court has jurisdiction to pass upon the validity of the WDL issued by respondent in this case, the same is subject to the timely filing of a *Petition for Review*.

Relative thereto, Section 11 of RA 1125, as amended by RA 9282, provides as follows:

> 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**, 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 <u>within thirty (30) days</u> 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. . ." (Emphasis supplied)

Moreover, Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

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> 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 <u>within thirty days</u> 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 with in the two-year period prescribed by law from payment or collection of the taxes. (Emphasis and underscoring supplied)

Based on the foregoing provisions, in appeals from the decision, ruling, or inaction of respondent CIR, a *Petition for Review* must be filed with this Court, within thirty (30) days from receipt of a copy of the decision or ruling, or the expiration of the period fixed by law for respondent CIR to act on the disputed assessment.

In the instant case, a perusal of the subject WDL reveals that it was served to petitioner on November 7, 2016.[45] Thus, petitioner had thirty (30) days therefrom or until December 7, 2016, to appeal and challenge its validity with the CTA.

However, petitioner only filed the instant *Petition for Review* on June 21, 2017 which is clearly beyond the reglementary period provided by law, rules and regulations.

Time and again, it has been held 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

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[45] Exhibit "P-6", Docket, p. 27.

jurisdiction over the case.[46] 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.[47]

Correspondingly, in view of petitioner's failure to timely file its *Petition for Review*, this Court did not acquire jurisdiction over the instant case.

With the foregoing ruling, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[46] *CIR vs. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010.
[47] *Ibid.*

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.

ERLINDA P. UY
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice