REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

JINNA MARIA O. YAP, *Petitioner,*	**CTA Case No. 10019**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 09 2023 ; 4:30 P.M.

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DECISION

MANAHAN, *J.*:

This is a *Petition for Review* filed by petitioner Jinna Maria O. Yap against respondent Commissioner of Internal Revenue (CIR) on February 1, 2019, praying that judgment be rendered lifting respondent's Warrant of Distraint and/or Levy No. 2019-00007 dated January 30, 2019 and declaring the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Preliminary Collection Letter (PCL) as void.[1]

THE PARTIES

Petitioner Jinna Maria O. Yap is of legal age, Filipino citizen, and with postal address at Sillawit, Cauayan, Isabela.[2]

Respondent is a government agency with postal address at 7th Floor, BIR Building, BIR Road, Diliman, Quezon City.[3]

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[1] Docket, Prayer, Petition for Review, p. 17.
[2] *Id.*, Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer (to the Petition for Review dated 01 February 2019)*, pp. 12 and 152, respectively.
[3] *Id.*, Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 273.

THE FACTS

On June 13, 2014, respondent issued *Letter of Authority* (LOA) No. 015-2014-00000012 for taxable year 2011, LOA No. 015-2014-00000011 for taxable year (TY) 2012, and LOA No. 015-2014-00000010 for TY 2013 to petitioner.[4]

On February 13, 2015, respondent issued the PAN dated February 5, 2015, for TY 2011, finding petitioner with the following deficiency taxes:[5]

Income tax	₱7,318,354.50
Value-added tax (VAT)	2,872,919.27
Expanded withholding tax (EWT)	1,335.13
Total	**₱10,192,608.90**

On June 5, 2015, respondent issued PAN dated May 11, 2015, for taxable year 2012, finding petitioner with the following deficiency taxes:[6]

Income tax	₱2,974,260.87
VAT	1,666,839.68
Total	**₱4,641,100.55**

On the same date, respondent issued PAN dated May 11, 2015, for taxable year 2013, finding petitioner with the following deficiency taxes:[7]

Income tax	₱9,501,479.50
VAT	3,258,385.36
EWT	808.03
Total	**₱12,760,672.89**

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[4] Docket, Par. 2, Joint Stipulation of Facts, JSFI, p. 273; Docket, Exhibits "P-1" to "P-3", pp. 339 to 344; BIR Records – Folder 3, Exhibit "R-1", p. 78; BIR Records – Folder 4, Exhibit "R-13", p. 2; BIR Records – Folder 2, Exhibit "R-7", p. 182.
[5] *Id.*, Par. 3, Joint Stipulation of Facts, JSFI, p. 273; Docket, Exhibit "P-4", pp. 345 to 348; BIR Records – Folder 3, Exhibit "R-5", pp. 175 to 178.
[6] *Id.*, Par. 4, Joint Stipulation of Facts, JSFI, p. 274; Docket, Exhibit "P-5", pp. 349 to 352; BIR Records – Folder 4, Exhibit "R-17", pp. 513 to 516.
[7] *Id.*, Par. 5, Joint Stipulation of Facts, JSFI, p. 274; Docket, Exhibit "P-6", pp. 353 to 356; BIR Records – Folder 2, Exhibit "R-11", pp. 370 to 373.

Respondent issued the FLD dated June 22, 2015, for taxable year 2011 to petitioner on June 25, 2015, finding the latter with the following deficiency taxes:[8]

Income tax		₱7,588,673.88
VAT		2,976,796.25
EWT		1,385.76
	Total	**₱10,565,470.13**

In reply to the said FLD, petitioner filed a *Legal Petition Notice* (LPN) dated July 20, 2015, which is her *Protest for Reinvestigation*, on July 24, 2015.[9] In support of the said LPN, she submitted supporting documents on September 22, 2015 via the LPN dated September 17, 2015.[10]

On July 8, 2015, respondent issued the FLD dated July 7, 2015 to petitioner, for taxable year 2013, finding petitioner with the following deficiency taxes:[11]

Income tax		₱9,673,953.68
VAT		3,316,037.68
EWT		824.71
	Total	**₱12,990,816.07**

On August 5, 2015, petitioner filed her LPN dated August 3, 2015 (*Protest for Reinvestigation*) for the foregoing FLD.[12] She submitted her supporting documents for the said LPN on October 2, 2015 via the LPN dated October 1, 2015.[13]

On September 1, 2015, respondent issued the FLD dated August 24, 2015 to petitioner, for taxable year 2012, finding the latter with the following deficiency taxes:[14]

[8] Docket, Par. 6, Joint Stipulation of Facts, JSFI, p. 274; Docket, Exhibit "P-7", pp. 357 to 362; BIR Records – Folder 3, Exhibit "R-6", pp. 221 to 227.
[9] *Id.*, Exhibit "P-10", pp. 376 to 383.
[10] *Id.*, Exhibit "P-12", pp. 391 to 396.
[11] *Id.*, Par. 7, Joint Stipulation of Facts, JSFI, p. 274; Docket, Exhibit "P-9", pp. 369 to 375; Exhibit "R-12", BIR Records – Folder 2, pp. 382 to 388.
[12] *Id.*, Exhibit "P-11", pp. 384 to 390.
[13] *Id.*, Exhibit "P-14", pp. 404 to 409.
[14] *Id.*, Par. 8, Joint Stipulation of Facts, JSFI, p. 274; Docket, Exhibit "P-8", pp. 363 to 368; BIR Records – Folder 4, Exhibit "R-18", pp. 529 to 533.

Income tax		₱3,102,444.50
VAT		1,722,672.03
	Total	**₱4,825,116.53**

In protest thereof, petitioner filed her LPN dated September 29, 2015 (*Protest for Reinvestigation*) on September 30, 2015.[15]

On July 10, 2018, respondent issued the PCL dated July 9, 2018 to petitioner,[16] requesting the latter to pay her tax liabilities for taxable years 2011 to 2013;[17] instead of a *Final Decision on Disputed Assessment* (FDDA).[18] Petitioner then filed the LPN dated July 13, 2018 on July 16, 2018.19

Thereafter, on January 31, 2019, petitioner received a copy of respondent's *Warrant of Distraint and/or Levy* (WDL) No. 2019-00007 dated January 30, 2019.[20]

On February 1, 2019, petitioner filed the present *Petition for Review with Motion to Suspend Collection of Taxes*.[21]

The hearing for petitioner's *Motion to Suspend Collection of Taxes* was initially scheduled on March 7, 2019. However, on March 4, 2019, petitioner filed a *Very Urgent Motion to Reset (Scheduled Hearing on 7 March 2019)*.[22] At the hearing held on March 7, 2019, the Court granted the said *Motion*, and reset the hearing to April 2, 2019.[23] Subsequently, petitioner filed a *Manifestation* on April 1, 2019,[24] stating that she will no longer present witness in support of the same *Motion*, and submits the same for resolution of the Court.

During the hearing held on April 2, 2019, petitioner's *Manifestation* was noted by the Court. In the same hearing, respondent moved to deny petitioner's *Motion to Suspend*

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[15] Docket, Exhibit "P-13", pp. 397 to 403.
[16] *Id.*, Par. 9, Joint Stipulation of Facts, JSFI, p. 274.
[17] *Id.*, Exhibit "P-16", pp. 416 to 417; BIR Records – Folder 2, Exhibit "R-19", pp. 459 to 460.
[18] *Id.*, Par. 18, *Petition for Review*, vis-à-vis Par. 1, *Answer (to the Petition for Review dated 01 February 2019)*, pp. 15 and 152, respectively.
[19] *Id.*, Exhibit "P-17", Docket, pp. 418 to 428.
[20] *Id.*, Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer (to the Petition for Review dated 01 February 2019)*, pp. 12 and 152, respectively.
[21] *Id.*, pp. 12 to 19.
[22] *Id.*, pp. 122 to 124.
[23] *Id.*, Minutes of the hearing held on, and Order dated, March 7, 2019, pp. 126 to 129.
[24] *Id.*, pp. 138 to 139.

Collection of Taxes, and the Court submitted the said *Motion* for resolution.[25]

In the Resolution dated June 4, 2019,[26] the Court denied petitioner's *Motion to Suspend Collection of Taxes* for lack of merit.

In the meantime, respondent filed his *Answer* on May 14, 2019,[27] interposing the following special and affirmative defenses, to wit:

1. The Honorable Court has no jurisdiction over the instant case;

2. Assuming without conceding that the present petition was filed within the reglementary period, the issues raised by the petitioner are without merit;

3. There is factual and legal basis for the 2011, 2012, and 2013 deficiency tax assessment and petitioner is liable for deficiency income tax;

4. Petitioner's reliance on *CIR vs. Agrinurture Inc.*[28] is misplaced;

5. Petitioner was afforded due process in the assessment of deficiency taxes; and

6. Tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if there is any.

In the Resolution dated June 13, 2019,[29] the Court referred the case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA). However, the parties decided not to have their case mediated by the PMC-CTA.[30]

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[25] Docket, Minutes of the hearing held on, and Order dated, April 2, 2019, pp. 140 to 143.
[26] *Id.*, pp. 166 to 169.
[27] *Id.*, pp. 152 to 162.
[28] CTA EB No. 1054.
[29] *Id.*, pp. 172 to 173.
[30] *No Agreement to Mediate* dated August 14, 2019 issued by the PMC-CTA, p. 177.

The Pre-Trial Conference was initially scheduled October 24, 2019,[31] but was reset to, and held on December 12, 2019.[32] Petitioner's *Pre-Trial Brief* was submitted on October 18, 2019,[33] while *Respondent's Pre-Trial Brief* was filed on November 19, 2019.[34]

On January 7, 2020, the parties submitted their *Joint Stipulation of Facts and Issues,*[35] which was approved by this Court in the Resolution dated January 17, 2020,[36] rendering the termination of the Pre-Trial Conference. The Pre-Trial Order dated January 28, 2020 was then issued.[37]

On January 30, 2020, respondent transmitted to the Court the *BIR Records* of this case.[38]

As trial ensued, petitioner presented her testimonial[39] and documentary evidence.

The *Petitioner's Formal Offer of Evidence* was filed on October 2, 2020,[40] and respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on November 11, 2020.[41] In the Resolution dated January 6, 2021,[42] the Court admitted petitioner's offered exhibits, *except* for Exhibits "P-15" and "P-18", for failure to present the originals for comparison.

For his part, respondent likewise presented testimonial and documentary evidence. He offered the testimonies of the following Revenue Officers, namely: (1) Ms. Zarah Rosanna L. Dumaga,[43] (2) Mr. Edgar M. Cauilan,[44] and (3) Ms. Elizabeth Soriano.[45]

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[31] Docket, Resolution dated August 30, 2019, Docket, p. 181; and, Docket, *Notice of Pre-trial Conference* dated September 4, 2019, pp. 182 to 183.
[32] *Id.*, Order dated October 21, 2019, p. 222; Docket, Minutes of the hearing held on, and Order dated, December 12, 2019, pp. 263 to 266, and 269 to 270, respectively.
[33] *Id.*, pp. 203 to 209.
[34] *Id.*, pp. 226 to 229.
[35] *Id.*, pp. 273 to 281.
[36] *Id.*, p. 287.
[37] *Id.*, pp. 294 to 302.
[38] *Id.*, Respondent's *Compliance* dated January 27, 2020, pp. 305 to 306.
[39] *Id.*, Exhibit "P-20", pp. 191 to 202; Docket, Minutes of the hearing held on, and Order dated September 22, 2020, pp. 327 to 331.
[40] *Id.*, pp. 334 to 338.
[41] *Id.*, pp. 435 to 436.
[42] *Id.*, pp. 446 to 447.
[43] *Id.*, Exhibit "R-22", pp. 235 to 243; Docket, Minutes of the hearing held on, and Order dated, January 21, 2021, pp. 448 to 451.

Respondent's Formal Offer of Evidence was filed on March 15, 2021,[46] while petitioner posted her *Comment/ Objections (Re: Respondent's Formal Offer of Evidence)* on May 24, 2021.[47] In the Resolution dated July 29, 2021,[48] the Court admitted respondent's offered exhibits.

Respondent submitted his *Memorandum* on October 26, 2021,[49] while the *Memorandum* of petitioner was posted on November 15, 2021.[50]

The present case was submitted for decision on February 7, 2022.[51]

ISSUES

As stipulated by the parties, the issues for resolution of the Court are the following:

> "1. Whether or not the Honorable Court has jurisdiction over the instant case.
>
> 2. Whether or not Petitioner is liable for deficiency taxes for the TY 2011, 2012, and 2013."[52]

Petitioner's Arguments

Petitioner argues that the LOAs for taxable years 2011 and 2013 were not served to her or her employee, and in her registered address; that respondent failed to prove that the LOA for taxable year 2012 was served to the petitioner or her employee; that the respondent failed to prove that the PAN and FLD were served to petitioner or her employee; that the WDL was prematurely issued because respondent did not issue a FDDA despite her protest; and that she is not liable for alleged

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[44] Docket, Exhibit "R-22", pp. 245 to 250; Docket, Minutes of the hearing held on, and Order dated, March 2, 2021, pp. 454 to 457.
[45] *Id.*, Exhibit "R-23", pp. 255 to 260; Docket, Minutes of the hearing held on, and Order dated, March 2, 2021, pp. 454 to 457.
[46] *Id.*, pp. 460 to 466.
[47] *Id.*, pp. 468 to 474.
[48] *Id.*, pp. 481 to 483.
[49] *Id.*, pp. 484 to 495.
[50] *Id.*, pp. 501 to 513.
[51] *Id.*, Resolution dated February 7, 2022, p. 516.
[52] *Id.*, Minutes of the Hearing on December 12, 2019, p. 264.

deficiency income tax because undeclared sales cannot prove undeclared income.

Respondent's Arguments

Respondent contends that the Court has no jurisdiction over the instant case; that assuming without conceding that the present petition was filed within the reglementary period, the issues raised by petitioner are without merit; that there is factual and legal basis for the 2011, 2012 and 2013, deficiency tax assessments, and petitioner is liable for deficiency income tax; that petitioner's reliance on *CIR vs. Agrinurture* is misplaced; that petitioner was afforded due process in the assessment of deficiency taxes; and that tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if there is any.

RULING OF THE COURT

The present *Petition for Review* is partly meritorious.

This Court has jurisdiction over the case.

Relative to the issue of jurisdiction, respondent, in his *Answer*,[53] avers the following:

> "12. From the foregoing, it is clear that the thirty-day period within which to file a Petition for Review should be counted from 10 July 2018 or the date of the receipt of the PCL, as admitted by petitioner.
>
> 13. Considering that the present petition was filed only on 01 February 2019 or beyond the thirty days provided by law, the assessment subject of this case has long become final, executory, and demandable. As such, the assessment is not subject to judicial scrutiny and is beyond the jurisdiction of the Honorable Court. Jurisprudentially, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action."

We disagree with respondent.

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[53] Docket, p. 154; Docket, petitioner's *Memorandum*, p. 487.

Respondent's argument must fail in light of Section 7(a)(1) of Republic Act (RA) No. 1125[54], as amended by RA No. 9282[55], which confers upon this Court the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the National Internal Revenue Code (NIRC). Said provision reads:

> "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 matters arising under the National Internal Revenue Code</u> or other laws administered by the Bureau of Internal Revenue;**" *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[56]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (*Philippine Journalists* case),[57] the Supreme Court held as follows, 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 wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the <u>warrant of distraint and levy</u> issued by the BIR is valid** and to rule if the Waiver of Statute of

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[54] AN ACT CREATING THE COURT OF TAX APPEALS.

[55] 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 PURPSES.

[56] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[57] G.R. 162852, December 16, 2004. *cqm*

> Limitations was validly effected." *(Emphasis and underscoring added)*

Clearly, the validity of a WDL is an issue that falls under "*other matters arising from the National Internal Revenue Code (NIRC)*" that is within the jurisdiction of this Court to decide upon. Considering that in the present *Petition for Review*, what is being primarily assailed is the WDL No. 2019-00007 dated January 30, 2019 issued by the BIR, the same then can be taken cognizance of by this Court.

In instances when respondent, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, the Supreme Court has considered this an implied denial.[58] The taxpayer's remedy then was to appeal to this Court within thirty (30) days from the date that it was notified of the warrant or collection suit.[59] Relative thereto, Section 11 of RA No. 1125, as amended by RA No. 9282, states, in part, 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...**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.
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> xxx xxx xxx." *(Emphases added)*

Thus, petitioner had thirty (30) days from receipt of the said WDL No. 2019-00007 dated January 30, 2019, or specifically, from January 31, 2019,[60] within which to file its appeal before this Court. Correspondingly, the filing of the present *Petition for Review* on February 1, 2019[61] was timely made.

Nevertheless, it must be pointed out that this Court is not unaware of the case where the Supreme Court considered

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[58] *Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829 (1988) [Per J. Cruz, First Division].

[59] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.

[60] Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer (to the Petition for Review dated 01 February 2019)*, Docket, pp. 12 and 152, respectively.

[61] Docket, pp. 12 to 19.

a collection letter having the character of finality, such as the subject PCL dated July 9, 2018,[62] which may already be considered as respondent's final decision that is appealable to this Court. Particularly, the case referred to is *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* ("*Avon* case"),[63] wherein the High Court ruled as follows:

> "In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.
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> This Court holds that the **Collection Letter** dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. The **Collection Letter** dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. The **Collection Letter** was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon 'failed to submit supporting documents within 60-day period.' This **Collection Letter** demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.
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> Avon received the **Collection Letter** dated July 14, 2004. Hence, Avon's appeal to the Court of Tax Appeals filed on August 13, 2004 was not time-barred.
>
> **In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, the Collection Letter constitutes an act of the Commissioner on 'other matters' arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. vs. CIR*,[64] may be the subject of an appropriate appeal before the Court of Tax Appeals.**" *(Emphasis added)*

Based on the foregoing jurisprudence, it is clear that a collection letter, having the character of finality, may be treated as respondent's final decision, which, in turn, may already be appealed to this Court. However, it is likewise clear that such collection letter may fall under the category of "other matters" pursuant to the earlier quoted *Philippine Journalists*

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[62] Docket, Par. 9, Joint Stipulation of Facts, JSFI, p. 274; Docket, Exhibit "P-16", pp. 416 to 417; BIR Records – Folder 2, Exhibit "R-19", pp. 459 to 460.
[63] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[64] 488 Phil. 218 (2004) [Per J. Ynares-Santiago, First Division]; G.R. 162852, December 16, 2004. *Bm*

case, which, as shown, categorically ruled that this Court's jurisdiction also includes the power *"to determine if the warrant of distraint and levy issued by the BIR is valid"*.

Thus, pursuant to, and harmonizing, the rulings in the *Avon* case and *Philippine Journalists* case, it is not hard to discern that this Court has jurisdiction, not only over cases questioning or assailing collection letters, which has the character of finality, but also WDLs.

Needless to state, it is elementary that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[65]

In any event, by virtue of *Philippine Journalists* case, the jurisdiction of this Court over the present case, which questions the WDL No. 2019-00007 dated January 30, 2019 issued by the BIR, cannot be doubted.

The LOAs, PANs, and FLDs, were served to petitioner.

Petitioner points out that she did not actually receive the LOAs for taxable years 2011 to 2013 issued by respondent against her; that the LOAs were also not served upon her employee; and that they were improperly served upon her sister, Dolly Cruz, who is neither authorized to do so, nor is her employee, and at a place that is not petitioner's registered business address.

It is noteworthy that petitioner has not convincingly proved what her registered address is. As a corollary, petitioner's postal address, *i.e.*, Sillawit, Cauayan, Isabela,[66] is exactly the same address as that indicated in the said three (3)

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[65] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July, 15, 2003.
[66] Docket, Refer to Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer (to the Petition for Review dated 01 February 2019)*, pp. 12 and 152, respectively.

LOAs.[67] Thus, petitioner cannot validly argue that the said documents were not received in her address.

More importantly, even granting that the same LOAs were served elsewhere and were supposedly received by petitioner's sister, Ms. Dolly Cruz, it may be concluded that the latter has an authority to do so, since the original copies thereof had reached petitioner. Notably, during trial, petitioner was able to present the said originals for the marking of, and comparison with, the reproduced copies of the said LOAs.[68] Moreover, it was likewise noted that petitioner did not explain the circumstances as to how she was able to obtain the original copies of the subject LOAs, thereby enabling her to show before this Court such original copies.

Thus, the contentions of petitioner that she did not actually receive the LOAs for taxable years 2011 to 2013 issued by respondent against her, and that sister, Ms. Dolly Cruz, was not authorized to receive the same, do not hold water.

In the same vein, there can be no merit in petitioner's contention that respondent failed to prove that the PAN and FLD were served to petitioner or her employee. This is simply because there was no need for respondent to do so, since the evidence of petitioner themselves convince Us that the PANs and FLDs were served to her.

Just as in the case of the subject LOAs, petitioner, during trial, was able to present the originals of the PANs and FLDs for the marking of, and comparison with, the reproduced copies thereof.[69] Thus, this a clear indication that petitioner has received the subject PANs and FLDs.

Moreover, petitioner cannot deny receipt of the subject FLDs, since she was able to file her LPNs or *Requests for Reinvestigation* for each of the subject FLDs, and has respectively acknowledged receipt thereof on specific dates, *viz.*:

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[67] Docket, Exhibits "P-1" to "P-3", pp. 339 to 344; BIR Records – Folder 3, Exhibit "R-1", p. 78; Exhibit "R-13", 2; Exhibit "R-7", BIR Records – Folder 2, p. 182.
[68] *Id.*, Exhibits "P-1" to "P-3", pp. 339 to 344, vis-à-vis Commissioner's Report (On Exhibits Marked) at the hearing held on February 11, 2020, Docket, pp. 310 to 312.
[69] *Id.*, Exhibits "P-4", "P-5", "P-6", "P-7", "P-8", and "P-9", pp. 345 to 375, vis-à-vis Commissioner's Report (On Exhibits Marked) at the hearing held on February 11, 2020, pp. 310 to 312.

For taxable year 2011:

"**On June 25, 2015, I received a June 22, 2015, Formal Letter of Demand** with an attached Audit Result/Assessment Notice with the same date, signed by the Regional Director Marina C. De Guzman."[70] *(Emphasis and underscoring added)*

For taxable year 2012:

"**On September 1, 2015, I received an August 24, 2015 Formal Letter of Demand** with an attached Audit Result/Assessment Notice with the same date, signed by the Regional Director Marina C. De Guzman."[71] *(Emphasis and underscoring added)*

For taxable year 2013:

"**On July 8, 2015, I received an July 7, 2015 Formal Letter of Demand** with an attached Audit Result/Assessment Notice with the same date, signed by the Regional Director Marina C. De Guzman."[72] *(Emphasis and underscoring added)*

Correspondingly, the inevitable conclusion is the LOAs, PANs, and FLDs, were all served to petitioner.

The tax assessments for taxable years 2011, 2012, and 2013 are partially incorrect.

In assessing petitioner for income tax and VAT for taxable years 2011, 2012, and 2013, respondent found that petitioner had undeclared purchases and expenses, in the

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[70] Docket, Exhibit "P-10", pp. 376 to 383, at p. 377.
[71] *Id.*, Exhibit "P-13", pp. 397 to 403, at p. 397.
[72] *Id.*, Exhibit "P-11", pp. 384 to 390, at p. 385.

aggregate amounts of ₱1,270,697.42[73], ₱4,388,046.32[74], and ₱406,101.33[75], respectively, which were treated as income.

Such treatment is incorrect.

The said undeclared purchases and expenses, even when the same are truly undeclared, should not be automatically treated as income, to which income tax should be imposed.

Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is gain derived and severed from capital, from labor or from both combined.[76] Income is profit or gain or the flow of wealth. The determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction.[77]

It is apparent that in a *purchase* or *expense* transaction, no amount of money comes to a taxpayer; instead, money is spent out by the latter. In other words, the said taxpayer does not derive any gain or profit from the transaction.

Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[78] Thus, even when a taxpayer has not claimed purchases and expenses, or declared a lesser amount thereof, in the Income Tax Return, such action is allowed, and shall *not* necessarily result in the imposition of income tax on the undeclared or underdeclared purchases.

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[73] ₱442,328.23+₱17,000.00+₱35,880.00+₱775,489.19=₱1,270,697.42. Docket, Exhibit "P-7", pp. 357 to 362, at p. 359; and BIR Records – Folder 3, Exhibit "R-6", pp. 221 to 227, at p. 225.

[74] Docket, Exhibit "P-8", pp. 363 to 368, at pp. 365 to 366; BIR Records – Folder 4, Exhibit "R-18", pp. 521 to 526, at pp. 523 to 524.

[75] *Id.*, Exhibit "P-9", pp. 369 to 375, at p. 371; and BIR Records – Folder 2, Exhibit "R-12", pp. 382 to 388, at p. 386.

[76] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

[77] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, supra.

[78] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd., et seq.*, G.R. Nos. L-19727 and L-19903, May 20, 1965. GM

Thus, in this case, there being no gain or profit, and since petitioner is free to deduct from its gross income a lesser amount, the income tax impositions for taxable years 2011, 2012, and 2013, have clearly no factual and legal bases.

In the same vein, just as no income tax should be imposed on the supposed undeclared purchases and expenses of petitioner, no VAT should likewise be imposed thereon.

VAT is a tax on transactions, imposed at every stage of the distribution process **on the <u>sale</u>, barter, exchange of goods or property, and on the performance of services**, even in the absence of profit attributable thereto.[79] It is a tax imposed **on each <u>sale</u>** of goods or services in the course of trade or business, or importation of goods as they pass along the production and distribution chain.[80] The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his/her customers.[81] The **<u>seller</u>** is the one statutorily liable for the payment of the VAT.[82] In other words, the party directly liable for the payment of the tax is the **<u>seller</u>**,[83] not the purchaser.

Moreover, it must be stressed that VAT is imposed on the "*gross selling price or gross value in money of the goods or properties sold, bartered or exchanged*" and is "*to be paid by the seller or transferor.*"[84]

For sure, when one purchases or spends, such person is deemed the **buyer** of the goods and/or services, and logically **not the seller** of the same. Such being the case, no VAT imposition should likewise arise from petitioner's supposed undeclared purchases and expenses for taxable years 2011, 2012, and 2013.

In sum, the subject income tax and VAT assessments for the said taxable years are partially incorrect.

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[79] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 125355, March 30, 2000.
[80] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[81] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[82] Section 4.105-2, Revenue Regulations No. 16-2005.
[83] *Commissioner of Internal Revenue vs. Benguet Corporation*, G.R. Nos. 134587 & 134588, July 8, 2005
[84] Sections 106(A) of the NIRC of 1997, as amended.

Correspondingly, upon exclusion of the "*undeclared income*" arising from undeclared purchases and expenses assessed by respondent for taxable years 2011, 2012 and 2013, petitioner is liable for basic deficiency taxes due for the said periods in the amounts of ₱4,358,059.86, ₱847,553.04 and ₱7,218,774.72, respectively, as computed below:

<u>For taxable year 2011</u>:

<u>Deficiency Income Tax</u>		
Taxable Income/return		₱ 413,040.01
Add: Undeclared Income from cash discrepancy		712,097.44
Unsupported Expenses/audit		9,099,285.22
Taxable Income		₱ 10,224,422.67
Income Tax Due		₱ 3,236,815.25
Less: Income Tax Paid		91,796.56
Basic Deficiency Income Tax		**₱3,145,018.69**
<u>Deficiency VAT</u>		
Vatable Sales/return		₱ 20,566,706.35
Add: Undeclared Income from cash discrepancy		712,097.44
Vatable Sales		₱ 21,278,803.79
Output Tax		₱ 2,553,456.45
Less: Input Tax (IT)/Return	₱2,309,940.17	
Less: IT on disallowed purchases (₱8,786,631.56 x 12%)	1,054,395.79	1,255,544.38
VAT Due		₱ 1,297,912.07
Less: VAT Paid	₱ 73,566.58	
VAT TC	12,021.92	85,588.50
Basic Deficiency VAT		**₱1,212,323.57**
<u>Deficiency EWT</u>		
Basic Deficiency EWT		**₱ 717.60**
Total Basic Deficiency Tax Due		**₱4,358,059.86**

<u>For taxable year 2012</u>:

<u>Deficiency Income Tax</u>	
Taxable Income/return	₱ 561,250.00
Add: Unsupported Expenses	1,289,094.48
Taxable Income/audit	₱ 1,850,344.48
Income Tax Due	₱ 557,110.23
Less: Income Tax Paid/Credits	158,702.66
Basic Deficiency Income Tax	**₱ 398,407.57**
<u>Deficiency VAT</u>	
Vatable Sales/return	₱ 47,617,132.73
Output Tax/audit	₱ 5,714,055.93

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Less: Input Tax (IT)/audit		
IT/return	₱5,502,035.71	
Less: Disallowed IT	449,145.46	5,052,890.25
VAT Due		₱ 661,165.68
Less: VAT Paid	₱ 121,145.26	
VAT Tax Credits/2307	90,874.95	212,020.21
Basic Deficiency VAT		**₱ 449,145.47**
Total Basic Deficiency Tax Due		**₱ 847,553.04**

For taxable year 2013:

Deficiency Income Tax		
Taxable Income per return		₱ 1,202,784.37
Add: Unsupported Expenses		16,918,315.67
Taxable Income per audit		₱ 18,121,100.04
Income Tax Due		₱ 5,763,752.01
Less: Income Tax Paid/Credits		349,891.00
Basic Deficiency Income Tax		**₱5,413,861.01**
Deficiency VAT		
Vatable Sales per return		₱ 48,245,759.97
Output Tax per audit		₱ 5,789,491.20
Less: Input Tax (IT) per audit		
Amount per Return	₱5,363,377.17	
Less: Disallowance from unsupported purchases	1,804,378.00	3,558,999.17
VAT Due		₱ 2,230,492.03
Less: VAT Paid/Credits		426,114.03
Basic Deficiency VAT		**₱1,804,378.00**
Deficiency EWT		
Basic Deficiency EWT Due		**₱ 535.71**
Total Basic Deficiency Tax Due		**₱7,218,774.72**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.**

Considering that the deficiency tax assessments issued by respondent against petitioner for taxable years 2011, 2012, and 2013, are partially incorrect, petitioner is **ORDERED TO PAY** respondent the modified amounts of **₱10,763,566.18, ₱1,932,998.93,** and **₱14,931,405.31,** for taxable years 2011, 2012, and 2013, respectively, inclusive of surcharges and deficiency interests imposed under Sections 248(A) and 249(B) of the NIRC of 1997, as amended, computed as follows: *om*

For taxable year 2011	**Income tax**	**VAT**	**EWT**	**Total**
Basic Tax Due	₱ 3,145,018.69	₱ 1,212,323.57	₱ 717.60	₱ 4,358,059.86
Add: 25% Surcharge	786,254.67	303,080.89	179.40	1,089,514.96
Income tax: 20% Deficiency Interest from April 16, 2012 to December 31, 2017 *[₱3,145,018.69 x 20% x 2,086/365 days]*	3,594,799.45			3,594,799.45
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱3,145,018.69 x 12% x 196/365 days]*	202,659.83			202,659.83
VAT: 20% Deficiency Interest from January 26, 2012 to December 31, 2017 *[₱1,212,323.57 x 20% x 2,167/365 days]*		1,439,509.69		1,439,509.69
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱1,212,323.57 x 12% x 196/365 days]*		78,120.14		78,120.14
EWT: 20% Deficiency Interest from January 16, 2012 to December 31, 2017 *[₱717.60 x 20% x 2,177/365 days]*			856.01	856.01
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱717.60 x 12% x 196/365 days]*			46.24	46.24
Total Amount Due, July 15, 2018	**₱7,728,732.64**	**₱3,033,034.29**	**₱1,799.25**	**₱10,763,566.18**

For taxable year 2012	**Income Tax**	**VAT**	**Total**
Basic Tax Due	₱ 398,407.57	₱ 449,145.47	₱ 847,553.04
Add: 25% Surcharge	99,601.89	112,286.37	211,888.26
Income tax: 20% Deficiency Interest from April 16, 2013 to December 31, 2017 *[₱398,407.57 x 20% x 1,721/365 days]*	375,703.80		375,703.80
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱398,407.57 x 12% x 196/365 days]*	25,672.73		25,672.73
VAT: 20% Deficiency Interest from January 26, 2013 to December 31, 2017 *[₱449,145.47 x 20% x 1,801/365 days]*		443,238.90	443,238.90
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱449,145.47 x 12% x 196/365 days]*		28,942.20	28,942.20
Total Amount Due, July 15, 2018	**₱899,385.99**	**₱1,033,612.94**	**₱1,932,998.93**

For taxable year 2013	**Income Tax**	**VAT**	**EWT**	**Total**
Basic Tax Due	₱ 5,413,861.01	₱ 1,804,378.00	₱ 535.71	₱ 7,218,774.72
Add: 25% Surcharge	1,353,465.25	451,094.50	133.93	1,804,693.68
Income tax: 20% Deficiency Interest from April 16, 2014 to December 31, 2017 *[₱5,413,861.01 x 20% x 1,356/365 days]*	4,022,572.89			4,022,572.89
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱5,413,861.01 x 12% x 196/365*	348,860.30			348,860.30

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days]				
VAT: 20% Deficiency Interest from January 26, 2014 to December 31, 2017 *[₱1,804,378.00 x 20% x 1,436/365 days]*		1,419,773.59		1,419,773.59
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱1,804,378.00 x 12% x 196/365 days]*		116,271.15		116,271.15
EWT: 20% Deficiency Interest from January 16, 2014 to December 31, 2017 *[₱535.71 x 20% x 1,446/365 days]*			424.46	424.46
12% Deficiency Interest from January 1, 2018 to July 15, 2018 *[₱535.71 x 12% x 196/365 days]*			34.52	34.52
Total Amount Due, July 15, 2018	**₱11,138,759.45**	**₱3,791,517.24**	**₱1,128.62**	**₱14,931,405.31**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the unpaid deficiency taxes due as of July 15, 2018 in the amounts of ₱10,763,566.18 for taxable year 2011, ₱1,932,998.93 for taxable year 2012 and ₱14,931,405.31 for taxable year 2013, or equivalent to ₱3,538.71[85], ₱635.51[86] and ₱4,908.96[87] per day for the respective periods computed from July 16, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[85] For taxable year 2011: ₱10,763,566.18 x 12% / 365 days.
[86] For taxable year 2012: ₱1,932,998.93 x 12% / 365 days.
[87] For taxable year 2013: ₱14,931,405.31 x 12% / 365 days.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(see Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JINNA MARIA O. YAP,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 10019

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
MAR 09 2023 4:30 p.m.

x -x

DISSENTING OPINION

REYES-FAJARDO, *J.*:

With due respect, I am constrained to withhold my assent on the *ponencia.*

The Court has no jurisdiction over the case, the Petition for Review not having been filed within thirty (30)-days from receipt of respondent's final decision.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[1]

In this relation, it is significant to point out that the Court of Tax Appeal (CTA), being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[2]

The Court has exclusive appellate jurisdiction over decisions of and cases of inaction by the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, among others. Section 7(a)(1) and (2) of Republic Act (RA) No. 1125[3], as amended by RA No. 9282,[4] provides:

> 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;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

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1 *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

2 See *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 190021, October 22, 2014.

3 AN ACT CREATING THE COURT OF TAX APPEALS.

4 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.

...

Relative thereto, Section 11 of RA No. 1125, as amended by RA No. 9282, provides that the appeal must be filed within thirty (30) days from 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):

> ...
>
> 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. ...

Section 228 of the National Internal Revenue Code (NIRC), as amended, provides for the procedure for protesting an assessment, which reads as follows:

> ...
>
> Section 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
>
> ...
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **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 the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[5]

Section 3.1.4 of Revenue Regulations (RR) No. 12-99[6], as amended by RR No. 18-2013[7] implements Section 228 of the NIRC, as amended, and provides the taxpayer's options on disputed assessments, thus:

> ...
>
> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** - refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** - refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> ...
>
> If the taxpayer fails to file a valid protest against the FLD /FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
>
> ...
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request

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5 Boldfacing supplied.

6 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

7 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> . . .
>
> **If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> **It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.**[8]

The records show that petitioner filed three (3) protests treated as requests for reinvestigation against the FAN and the FLD, as follows:

Protest/ Request for Reinvestigation for Taxable Year	Date Filed
LPN dated July 20, 2015 for TY 2011[9]	July 24, 2015
LPN dated August 3, 2015 for TY 2013[10]	August 5, 2015
LPN dated 29 September 2015 for TY 2012[11]	September 30, 2015

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8 Boldfacing supplied.
9 Exhibit "P-10", Docket, pp. 376 to 383.
10 Exhibit "P-11", Docket, pp. 384 to 390.
11 Exhibit "P-13", Docket, pp. 397 to 403.

Thereafter, petitioner submitted supplemental protests treated as the relevant supporting documents in support of petitioner's requests for reinvestigation, as follows:

Supplemental Protest for Taxable Year	Date Filed
LPN dated September 17, 2015 for TY 2011[12]	September 22, 2015
LPN dated October 1, 2015 for TY 2013[13]	October 2, 2015
LPN dated November 25, 2015 for TY 2012[14]	November 26, 2015

Based on the foregoing provisions, respondent has one hundred eighty (180) days from petitioner's submission of supporting documents on September 22, 2015, October 2, 2015, and November 26, 2015, respectively, or until March 20, 2016, March 30, 2016, and May 24, 2016, respectively, to render his decision.

As found in the records, the one hundred eighty (180)-day period lapsed without any action on the part of respondent.

In case of inaction on the protest within the 180-day period, petitioner under the above cited provisions of RR No. 12-99, as amended by RR No. 18-2013, may either: (1) appeal to the Court in Division within thirty (30) days from the lapse of the one hundred eighty (180)-day period on March 20, 2016, March 30, 2016 and May 24, 2016, respectively; or (2) await the final decision on disputed assessment (FDDA) of respondent or his duly authorized representative even beyond the one hundred eighty (180)-day period and appeal such decision to this Court within thirty (30) days from receipt of such decision.

Petitioner did not file an appeal before the Court in Division within thirty (30) days from the lapse of the one hundred eighty (180)-day period. Petitioner opted to wait for the FDDA. Thus, petitioner had thirty (30) days from receipt of such final decision within which to appeal the same to the Court in Division.

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12 Exhibit "P-12", Docket, pp. 391 to 396.

13 Exhibit "P-14", Docket, pp. 404 to 409.

14 Exhibit "P-15", Docket, pp. 410 to 415. Exhibit "P-15" which is a photocopy of the LPN dated November 25, 2015, was denied admission by this Court in its Resolution dated January 6, 2021.

Petitioner maintains that instead of receiving an FDDA, petitioner received a PCL.

The records show that on July 10, 2018, petitioner received the PCL dated July 9, 2018[15] holding petitioner liable for alleged TYs 2011, 2012 and 2013 outstanding Income, Value-Added and Expanded Withholding taxes in the total amount of Twenty-Eight Million Three Hundred Eighty-Two Thousand Seven Hundred Eighty-Eight and 49/100 Pesos (₱28,382,788.49) covered by LOA-015-2014-00000012, LOA-015-2014-00000011 and LOA-015-2014-00000010.

After a careful evaluation of the PCL for TYs 2011, 2012, and 2013, I submit that the PCL is respondent's final decision on petitioner's protest against the FLD/FAN appealable to the Court in Division.

In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue (Oceanic)*,[16] the Supreme Court explained that a letter may be considered as the CIR's final decision on a disputed assessment, if it communicates to the taxpayer in clear and unequivocal language what constitutes the CIR's final determination of the disputed assessment, to wit:

> ...we deem it appropriate to state that the Commissioner of Internal Revenue **should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer** constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. **On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.**

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15 Par. 19, *Petition for Review*, Docket, pp. 15.

16 *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, The Court of Tax Appeals, and the Court of Appeals*, G.R. No. 148380, December 9, 2005 as cited in *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 2311 (CTA Case No. 10081), January 25, 2022.

> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment - and, consequently, the collection of the amount demanded as taxes - by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.[17]

The tenor of the PCL signed by respondent's authorized representative, Chief of Collection Division Daisy W. Quirino reiterated the outstanding tax liabilities of petitioner, requested the payment thereof to avoid the accumulation of delinquency interest and warned petitioner that if payment of the tax liabilities be not made within five (5) days from receipt of such PCL, respondent shall be "constrained to enforce the collection thereof [through] the Administrative Summary remedies provided for by law, without further notice."[18] Similarly, as in *Oceanic*,[19] the Supreme Court held:

> In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it **reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice."** In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.[20]

Further, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.* ("*Avon* case"),[21] the Supreme Court

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17 Boldfacing supplied.

18 Exhibit "P-16", Docket, pp. 416 to 417; Exhibit "R-19", BIR Records - Folder 2, pp. 459 to 460.

19 *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, The Court of Tax Appeals, and the Court of Appeals,* G.R. No. 148380, December 9, 2005 as cited in *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 2311 (CTA Case No. 10081), January 25, 2022.

20 Boldfacing supplied.

21 G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

considered a collection letter having the character of finality that is appealable to this Court. The Supreme Court held:

> In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.
>
> This Court holds that the **Collection Letter** dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. The **Collection Letter** dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. The **Collection Letter** was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon 'failed to submit supporting documents within 60-day period.' This **Collection Letter** demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.[22]

Considering that the PCL has the character of finality, the thirty (30)-day period within which to file an appeal before the Court in Division should be reckoned from the receipt of the PCL on July 10, 2018 and not the date of receipt of the WDL on January 31, 2019. Petitioner had until August 9, 2018, within which to file her Petition for Review before the Court in Division. The Petition for Review was therefore belatedly filed on February 1, 2019.

As respondent correctly pointed out, the Court has no jurisdiction to take cognizance of the present Petition for Review as the assessment had already become final, executory and demandable.

The Warrant of Distraint and/or Levy (WDL) No. 2019-00007 dated January 30, 2019, was denied admission in evidence.

In the same vein, there can be no merit in petitioner's contention that the thirty (30)-day period to appeal before the Court should be reckoned from petitioner's receipt of the WDL. Section 7(a)(1) of

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22 Boldfacing supplied.

Republic Act (RA) No. 1125[23], as amended by RA No. 9282[24] confers upon this Court the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC. The validity of a WDL is an issue that falls under "other matters" that is within the jurisdiction of this Court to decide upon. However, Exhibit "P-18" which is a photocopy of the WDL, was denied admission by this Court in its Resolution dated January 6, 2021[25]; hence, said document may not be considered in granting a relief.[26]

I am aware that respondent in item No. 1 of his *Answer (to the Petition for Review dated 01 February 2019)*, admitted the allegations contained in paragraph 3 under the caption "TIMELINESS OF THE PETITION," of the petition, which reads:

> 1. He **ADMITS** the allegations contained in paragraphs 1 and 2 under the caption "THE PARTIES", paragraph 3 under the caption "TIMELINESS OF THE PETITION", paragraph 5,6,7,8,9,10,12 and 18 under the caption "FACTS OF THE CASE" of the petition.

Paragraph 3 of the *Petition for Review with Motion to Suspend Collection of Taxes* which respondent admitted reads:

> 3. On 31 January 2019, Petitioner received a copy of Respondent's Warrant of Distraint and/or Levy No. 2019-0007 dated 30 January 2019, a copy of which is hereto attached as ANNEX "A".

However, in my view, the WDL's receipt by petitioner was disputed by respondent. No. 2 of the *ANSWER (to the Petition for Review dated 01 February 2019)* reads:

> 2. Under the caption "FACTS OF THE CASE", respondent specifically **DENIES** the allegations contained in paragraphs 11. 13, 14, 15, 16, 17, 19 and 20 for lack of

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23 *Supra* note 3.
24 *Supra* note 4.
25 Docket, pp. 446 to 447.
26 See *Spouses Guidangen v. Wooden,* G.R. No. 174445, February 15, 2012.

> knowledge or information sufficient to form a belief as to the truth thereof.

Paragraph 20 of the *Petition for Review with Motion to Suspend Collection of Taxes* which respondent specifically denied reads:

> 20. Worse, on 31 January 2019, Petitioner received a copy of Respondent's Warrant of Distraint and/or Levy No. 2019-00005 dated 30 January 2019. Petitioner was thus constrained to file instant petitioner for review.

Respondent's admission and denial at the same time of petitioner's fact of receipt of the WDL did not remove it from the field of controversy. I submit that it cannot considered a judicial admission on his part because there was no intention to admit.

In addition, the fact of receipt by petitioner of respondent's WDL or its existence, genuineness, and due execution was not included in the summary of admitted facts and proposed stipulations of facts in respondent's pre-trial brief. Neither was it included in the summary of undisputed facts in petitioner's pre-trial brief nor was it one of the stipulated facts contained in the Pre-Trial Order promulgated on January 28, 2020.

Precisely, the Court is mandated to render judgment based on the evidence presented before it, in compliance with the dictates of due process.[27]

From all the foregoing, I vote for the dismissal of the *Petition for Review* filed by Jinna Maria O. Yap.

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

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27 See *Republic of The Philippines, Represented By: Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno,* G.R. No. 237428, May 11, 2018.