22-000405-0060

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10965

FUJITEC, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. FELY ROSE R. DAGANTA
Bureau of Internal Revenue
Legal Division, Revenue Region 8B-South NCR
2nd Foor, BIR Regional Office Bldg.
No. 313 Sen. Gil Puyat Ave., Makati City

CHAN TAGAPAN SIA LAW OFFICES
Unit F, 5th Floor, CK Building
No. 10 Don A. Roces Ave.,
Barangay Paligsahan, Quezon City

GREETINGS:

You are hereby notified by these presents that on **May 7, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 8, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FUJITEC, INC.,
Petitioner,

CTA CASE NO. 10965

Members:

- versus -

DEL ROSARIO, *P.J.*, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 07 2025; 11:00AM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a "Petition for Review (with Prayer for Immediate Issuance of Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction and/or Suspension of Collection of Taxes)"[1] (**Petition with Motion for Suspension**) and "Supplemental Petition for Review"[2] (**Supplemental Petition**) filed by petitioner Fujitec, Inc. (**petitioner**), pursuant to Section 3(a)[3], Rule 8 in relation to Section

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1 Filed on 26 August 2022, Division Docket, Volume I, pp. 7-29.

2 Filed on 10 November 2022, id., pp. 173-190.

3 **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 within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected,

3(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).[5] It seeks to cancel and set aside the assessment against petitioner and the Warrant of Distraint and/or Levy (**WDL**) No. RR8B-2022-07-21-00072, dated 02 August 2022[6] that respondent Commissioner of Internal Revenue (**respondent/CIR**) issued to it. The WDL sought to collect petitioner's alleged tax deficiency assessment in the aggregate amount of ₱22,351,906.06 for the calendar year ending 31 December 2018 (**CY 2018**).

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 2nd Floor Cargo Aire Centre, Ninoy Aquino Ave. corner Kabihasnan, Brgy. San Dionisio, Parañaque City, Metro Manila, Philippines.[7] Petitioner is primarily engaged in the sale, supply, installation and maintenance of elevators, escalators and moving walkways.[8]

Respondent, on the other hand, is the duly appointed CIR vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

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the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

4 **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[.]

5 A.M. No. 05-11-07-CTA.

6 Dated 02 August 2022; Exhibits "R-16", BIR Records, p. 267.

7 See Paragraph 1, Parties, Petition for Review, supra at note 1, p. 9.

8 Exhibit "P-1", Division Docket, Volume I, pp. 136-144.

FACTS OF THE CASE

On 26 September 2019, respondent issued a Letter of Authority (**LOA**) No. 047-2019-00000897/eLA201700030367[9], authorizing Revenue Officer Jamela Montila (**RO Montila**) and Group Supervisor Ricaredo Balderas (**GS Balderas**) of Revenue District No. 047, East-Makati, to examine petitioner's books of accounts for all internal revenue taxes for the period of 01 January 2018 to 31 December 2018, or CY 2018. Petitioner's authorized representative, Ariane Francisco (**Francisco**), received the LOA on 16 October 2019.

Thereafter, on 29 October 2019, petitioner received, through Marco Camposagrado, a First Notice for Presentation of Records (**First Notice**) dated 28 October 2019.[10] In the First Notice, the BIR directed petitioner to present its books of accounts and other related accounting records within ten (10) days from receipt. Complying with the First Notice, petitioner, through Francisco, submitted the requested documents on 04 November 2019.[11]

Later, or on 19 February 2021, petitioner received a Notice of Discrepancy[12] (**NOD**) informing it of the assessment for deficiency taxes in the aggregate amount of ₱29,616,958.89.

On 20 December 2021, the BIR, through Regional Director Maridur V. Rosario (**RD Rosario**) issued the Preliminary Assessment Notice[13] (**PAN**), with Details of Discrepancies, where it was stated that petitioner has been assessed with deficiency income tax (**IT**), value-added tax (**VAT**), and withholding tax on compensation (**WTC**) in the total amount of ₱22,184,412.14. On 14 January 2022, the BIR also issued the [Final] Assessment Notice/Formal Letter of Demand[14] (**FAN/FLD**) with Details of Discrepancies, where petitioner was directed to pay its deficiency tax liabilities on or before 28 February 2022.[15]

9 Exhibit "R-1", BIR Records, p. 4.
10 Exhibit "R-3", id., p. 3.
11 Id., p. 112.
12 Exhibit "R-4", id., pp. 120-122.
13 Exhibit "R-6", id., pp. 198-203.
14 Exhibits "R-7" to "R-10", id., pp. 222-230.
15 Exhibits "R-8" to "R-10", id., pp. 228-230.

Subsequently, on 02 August 2022, petitioner, through Joecyl Cambalon (**Cambalon**) received the assailed WDL, under protest.[16] Allegedly, petitioner refused to receive the WDL, on the ground that it did not receive any PAN or FAN/FLD for CY 2018.[17]

PROCEEDINGS BEFORE THE COURT

On 26 August 2022, petitioner filed a Petition with Motion for Suspension[18] before this Court. The case was raffled to the Second Division and was docketed as CTA Case No. 10965. After, or on 05 September 2022, the Second Division issued a Resolution: (1) giving respondent five (5) days from notice to file his or her Comment/ Opposition; and (2) setting a hearing on 14 September 2022 regarding the Motion for Suspension.

Later, with the issuance of the Summons, the Second Division ordered respondent to file his or her Answer to the instant petition.[19] During the hearing held on 14 September 2022[20], petitioner presented its witnesses Cambalon and Francisco.

Cambalon testified by way of a Judicial Affidavit dated 23 August 2022[21] and declared that: (1) petitioner is a domestic corporation primarily engaged in the sale, supply, installation and maintenance of elevators, escalators and moving walkways; (2) she is employed as its Finance Manager; (3) she is the duly appointed representative who is authorized to represent it in all stages of the proceeding; (4) on 16 October 2019, it received a copy of an LOA dated 26 September 2019; (5) the said LOA authorizes the examination of its books of accounts and other accounting records for all internal revenue taxes for CY 2018; (6) after, it received the First Notice which directed it to submit its books of accounts within ten (10) days; (7) in compliance with the First Notice, Francisco, its Senior Accountant, submitted all the requested documents on 04 November 2019; (8) on [19] February 2021, it received an NOD from the BIR; (9) almost a year and a half thereafter, on

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16 Supra at note 6.
17 See markings on the lower portion of Exhibit "R-16", supra at note 6.
18 Supra at note 1.
19 See Summons dated 05 September 2022, Division Docket, Volume I, p. 95.
20 See Minutes of the Hearing and Order, both dated 14 September 2022, id., pp. 96 and 97-98, respectively.
21 Exhibit "P-10", id., pp. 49-61.

02 August 2022, she received the assailed WDL, under protest; (**10**) she was surprised to have found out that the WDL was issued based on an FAN/FLD dated 14 January 2022, assessing petitioner for nonpayment of deficiency IT, VAT, WTC, including penalties, surcharges and interests in the aggregate amount of ₱22,351,906.06; (**11**) petitioner did not, at any point, receive any PAN and FAN/FLD for CY 2018; (**12**) it had no intention of avoiding any tax liability from the BIR; (**13**) she then learned that the WDL was already implemented and served to petitioner's depository banks – Metrobank and Banco De Oro (**BDO**); and (**14**) the WDL extremely affected its business operation, since it cannot use the funds in the amount of ₱22,351,906.06.

Later, Francisco testified on direct examination also by way of Judicial Affidavit dated 23 August 2022[22], and stated that (**1**) she is petitioner's Senior Accountant; (**2**) the WDL was served to it on 02 August 2022, but she obtained the actual copy thereof on 10 August 2022; (**3**) Cambalon received the WDL; (**4**) the WDL was issued based on an FAN/FLD dated 14 January 2022, assessing it for nonpayment of deficiency IT, VAT, WTC, including penalties, surcharges and interest in the aggregate amount of ₱22,351,906.06; (**5**) it did not receive any PAN and FAN/FLD for CY 2018 from the BIR; (**6**) the amount of ₱22,351,906.06 is too enormous and that she did not have any opportunity to check or question the BIR's computation of the alleged deficiency taxes; (**7**) Cambalon initially refused to receive the WDL because it was issued without any prior PAN and FAN/FLD for CY 2018; and (**8**) the WDL was implemented and served on petitioner's depository banks – Metrobank and BDO.

Later, on 22 September 2022, in view of respondent's absence despite due notice and upon petitioner's motion, the Court deemed respondent to have already waived his or her right to cross-examine petitioner's witnesses (Cambalon and Francisco).[23] On even date, petitioner filed its Formal Offer of Evidence[24] (**FOE**) and offered Exhibits "**P-1**" to "**P-11**", inclusive of the sub-markings.

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22 Exhibit "P-11", id., pp. 81-88.

23 See Minutes of the Hearing and Order, both dated 22 September 2022, id., pp. 112 and 113-114, respectively.

24 Id., pp. 115-122.

On 07 November 2022, after being granted an extension of time[25], respondent filed an Answer to the present Petition with Motion for Suspension.[26]

In his or her Answer, respondent interposed the following defenses: (1) petitioner was properly assessed to pay deficiency taxes in the total amount of ₱22,351,906.06; (2) the assessment ensued from the issuance of an LOA dated 26 September 2019, which it received on 16 October 2019; (3) it was served with an NOD and thereafter, the audit and examination of its books of accounts continued (which led to the service and issuance of the PAN dated 20 December 2021); (4) FAN/FLD dated 14 January 2022 was served and issued to it; (5) there was no violation of due process as it was validly served with its PAN and FAN/FLD; (6) both the PAN and FAN/FLD were duly served on petitioner at its registered address and despite receipt of the said notice, it failed to file a valid protest; (7) petitioner's bare allegation that it was not served with PAN and FAN/FLD is not sufficient to overthrow the presumption of validity of respondent's assessment; (8) after the FAN/FLD was duly served on petitioner on 09 February 2022, it should have protested the assessment by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment; (9) since it failed to file a Protest, the said assessment became final, executory and unappealable; (10) it had only until 11 March 2022 to file its Protest to the FAN/FLD and since it failed to do so, the subject assessment became final and unappealable, thus, the instant case should be dismissed for lack of jurisdiction; and (11) tax assessments issued by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment, unless proven otherwise.[27]

In the *interim*, the Second Division issued a Resolution dated 07 November 2022[28], noting petitioner's manifestation that it intends to amend its Petition considering respondent's implementation of his or her WDL against it.[29] Consequently, in a Resolution dated 22 February 2023[30], the Second Division granted petitioner's "Omnibus Motion (To Withdraw Motion/Application for Suspension of Collection of Taxes

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[25] See Resolution dated 27 October 2022, id., p. 162.
[26] See Respondent's Answer (With Comment/Opposition), id., pp. 223-242.
[27] Id.
[28] See Resolution dated 07 November 2022, id., p. 164.
[29] See Manifestation dated 26 October 2022, id., pp. 157-159.
[30] Id., pp. 306-307.

(on the Ground of Being Moot and Academic) [**Motion to Withdraw Application for Suspension**] With Motion to Admit Attached [Supplemental Petition])" filed on 10 November 2022[31], and admitted petitioner's Supplemental Petition.

On 02 May 2023, the Second Division issued a Resolution[32] that: (1) granted petitioner's "Motion to Set Case for Pre-Trial and Further Proceedings"[33]; (2) ordered that respondent's Answer filed on 07 November 2022[34] be treated as his or her Answer to petitioner's Supplemental Petition (due to respondent's failure to file a Supplemental Answer); and (3) set the case for Pre-Trial on 01 August 2023.

In another Resolution dated 29 May 2023, the Second Division transferred the case to the First Division pursuant to Administrative Circular No. 01-2023 dated 23 May 2023.[35]

Subsequently, both parties filed their Pre-Trial Briefs[36] on 10 July 2023 and 28 July 2023, respectively. On 01 August 2023, during the pre-trial, the First Division: (1) granted the parties 30 days to file their Joint Stipulation of Facts and Issues (**JSFI**); (2) set both the petitioner's and respondent's presentation of witnesses on 19 September 2023 and 25 January 2024, respectively and the presentation of petitioner's and respondent's evidence on 24 August 2023; (3) imposed a fine of ₱1,000.00 against respondent for his or her failure to file the judicial affidavits of his or her witnesses; and (4) granted respondent a period of fifteen (15) days to file the same.[37]

On 18 August 2023, respondent submitted the BIR Records[38] which the First Division noted in a Resolution dated 24 August 2023.[39] In the said Resolution, the Court also noted respondent's Compliance (Re: Submission of Judicial Affidavit of Revenue Officer Christopher S.

31 Id., pp. 165-190.
32 Id., pp. 314-315.
33 Filed on 30 March 2023, id., pp. 309-311.
34 Supra at note 26.
35 Reorganizing the Divisions of the Court following the retirement of Associate Justice Erlinda P. Uy, Division Docket, Volume I, p. 316.
36 See Petitioner's Pre Trial-Brief and Respondent's Pre Trial-Brief, id., pp. 322-341 and 346-360, respectively.
37 See Minutes of the Hearing and Order, both dated 01 August 2023, id., pp. 361-363 and 364-366, respectively.
38 See Compliance (With Profuse Apology), BIR Records.
39 Division Docket, Volume I, pp. 451-452.

Libunao (**RO Libunao**)[40] and [RO Montila][41] filed on 18 August 2023 and 16 August 2023, respectively.

On 24 August 2023, the parties filed their "[JSFI]".[42] On 08 September 2023, the First Division declared the pre-trial terminated[43], and the Pre-Trial Order[44] was subsequently issued on 18 September 2023.

In the trial that ensued, petitioner presented its witnesses, Cambalon and Francisco, who testified by way of their Judicial Affidavits dated 23 August 2022.[45] As *per* petitioner's manifestation[46], they essentially adopted the same testimony during the hearing held on 14 September 2022.[47]

In addition, by way of her Supplemental Judicial Affidavit dated 10 November 2022, Francisco testified further that: (1) during the pendency of the Motion for Suspension, she received information from petitioner's depository banks that respondent had enforced the questioned WDL; (2) respondent was able to collect the total amount of ₱28,191,790.45 or more than the amount indicated in the WDL (₱22,351,906.06); (3) he or she was able to collect the following amounts from its depository banks, on the following dates: (*i*) BDO – ₱22,351,906.06, on 10 October 2022; (*ii*) Metrobank – ₱4,858,840.32, on 27 September 2022; (*iii*) Security Bank – ₱661,257.94, on 25 August 2022; and (*iv*) Rizal Commercial Banking Corporation (**RCBC**) – ₱319,786.13, on 30 September 2022, totaling - ₱28,191,790.45; (4) she only discovered that its BDO bank account was garnished through a Letter dated 07 October 2022 which the BDO sent along with a copy of respondent's 27 September 2022 Letter Instruction to BDO (**Letter Instruction to BDO**); (5) in the said Letter Instruction to BDO, respondent officially instructed BDO to release its garnished bank deposits in the following amounts: ₱15,679,164.59, ₱6,641,619.92 and ₱31,121.55; (6) RO Libunao then collected the total amount of ₱22,351,906.06 and received the following manager's checks: Check No. 0003200-₱15,679,164.59, Check No. 0003201-₱6,641,619.92 and Check

[40] See Compliance, dated 17 August 2023, id., pp. 380-389.
[41] See Compliance, dated 16 August 2023, id., pp. 405-420.
[42] Id., pp. 454-464.
[43] See Resolution dated 08 September 2023, id., p. 469.
[44] Id., pp. 473-496.
[45] Supra at notes 21 and 22.
[46] TSN dated 19 September 2023, pp. 6-7.
[47] Supra at note 20.

No. 0003202-₱31,121.55; (7) she learned that respondent also collected ₱4,858,840.32 from its Metrobank Account through an Advisory on Release of Funds and Debit Memo both dated 27 September 2022; (8) the officers of Security bank informed her that they released the amount of ₱661,257.94 to the BIR; (9) Security Bank provided her with a Letter dated 22 August 2022 that instructed the former to issue a manager's check for the said amount; (10) RCBC likewise sent a Letter dated 03 October 2022, which informed it that RCBC has received an order of release from BIR, and in compliance with the said order RCBC has paid the amount of ₱319,786.13 in favor of BIR; (11) the WDL is null and void, and he or she collected the taxes in an arbitrary manner; (12) respondent collected an amount that exceeded the amount indicated in the WDL (or in excess of ₱5,839,884.39); and (13) respondent failed to serve a Warrant of Garnishment (**WOG**) on petitioner's depository banks.[48]

No cross-examination was conducted.[49]

During cross-examination, Cambalon additionally declared that: (1) petitioner's registered office is currently located at 2nd Floor, Cargoaire Center, Ninoy Aquino Ave. cor. Kabihasnan Road, San Dionisio, Parañaque City; (2) it held office in Salcedo in October 2021; (3) prior to transferring to its new address, it filed a written notice to the Revenue District Officer concerned; (4) it has fully complied with BIR rulings regarding its transfer of office; and (5) the written notice was filed with the BIR sometime in October or November.[50]

Petitioner did not conduct any redirect examination.[51]

On 29 September 2023, petitioner filed its [FOE][52] and offered Exhibits "**P-1**" to "**P-21**", inclusive of the sub-markings. Respondent filed his or her Comment/Opposition thereto on 10 October 2023.[53] In a

48 See Exhibit "P-21", Division Docket, Volume I, pp. 202-214.
49 TSN dated 19 September 2023, p. 17.
50 Id., pp. 9-11.
51 Id., p. 11.
52 Division Docket, Volume II, pp. 501-512.
53 See Respondent's Comment/Opposition (To Petitioner's Formal Offer of Evidence dated September 28, 2023), id., pp. 522-525.

Resolution dated 01 December 2023[54], the First Division admitted all of petitioner's offered exhibits.

For his or her part, respondent presented RO Montila as his or her first witness.[55] In her Judicial Affidavit[56], RO Montila declared that: (1) she is an employee of the BIR since December 2018; (2) she was assigned at Revenue District Office (**RDO**) No. 47 since August 2019; (3) she served a copy of the LOA and Checklist of Requirements on petitioner on 16 October 2019; (4) Francisco received the said LOA; (5) on 29 October 2019, she served a copy of the First Notice to petitioner; (6) petitioner received the NOD on 19 February 2021; (7) based on her audit, she prepared a memorandum finding petitioner liable for deficiency IT, VAT and WTC; (8) GS Balderas signed the memorandum; (9) on 20 December 2021, the PAN was issued to petitioner; (10) on 14 January 2022, the FAN/FLD was issued assessing petitioner with deficiency IT, VAT, and WTC in the aggregate amount of ₱22,351,906.06; (11) she served the FAN/FLD on petitioner on 08 February 2022 via LBC which was received by petitioner's authorized representative Jose Atanas (**Atanas**) on 09 February 2022; (12) as proof of valid service, she was issued LBC Tracking Receipt No. 1270 7554 8758; (13) as proof that petitioner received the FAN/FLD, she presented a printed copy of LBC's Track and Trace online page; and (14) petitioner failed to file a valid protest within 30 days from notice, hence petitioner's BIR Records was referred to the Collection Division, through an Indorsement dated 24 May 2022.

During her cross-examination, RO Montila testified further that: (1) the LOA was never revalidated since its issuance; (2) upon receipt of the PAN, she attempted to personally serve it on petitioner at its registered address in Legazpi, Makati, but the security guard informed her that petitioner had already moved out of the building; (3) using Google, she looked for its new address and found that it had transferred to Parañaque; (4) she mailed the PAN, through LBC, to petitioner's new address in Parañaque; (5) she is unaware if Atanas is petitioner's employee; and (6) she had no opportunity to personally ascertain if Atanas is petitioner's authorized representative.[57]

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54 Id., pp. 530-531.
55 See Order dated 25 January 2024, id., pp. 541-542.
56 Exhibit "R-23", id., pp. 408-420.
57 TSN dated 25 January 2024, pp. 14-31.

On redirect examination, RO Montila stated that: (1) there is no need to revalidate the LOA as she remained the authorized officer to conduct the audit investigation of petitioner; (2) she was not informed of petitioner's transfer to Parañaque; and (3) LBC does not take any special instruction from the BIR.

No re-cross examination followed.[58]

Respondent thereafter presented RO Libunao as his or her second witness.[59] In his Judicial Affidavit[60], RO Libunao declared that: (1) he is an employee since 21 March 2022; (2) she is assigned at the BIR's Collection Division; (3) he was the one directed to conduct collection strategies on petitioner's deficiency taxes for CY 2018, through Memorandum of Assignment (**MOA**) No. 2022-07-07-00130 dated 07 July 2022; (4) he served the WDL dated 02 August 2022 on petitioner; (5) he initially attempted to personally serve the WDL on petitioner at its office in Parañaque City but the latter refused to receive the WDL; (6) due to the refusal to receive the WDL, he requested for assistance from barangay officials to serve the same on the same date; (7) he also served a copy of the WDL on petitioner's representative (who visited his office) on 10 August 2022; and (8) he sent the WOG dated 03 August 2022 to petitioner *via* registered mail but it was later on returned (after it was allegedly refused receipt).

During his cross-examination, RO Libunao testified further that: (1) he is aware that the tax liability indicated in the WDL is ₱22,351,906.06; and (2) he collected an amount that exceeded the amount indicated in the WDL or in excess of ₱5,839,884.39.[61]

On redirect examination, RO Libunao stated that: (1) he collected an amount larger than that indicated in the FAN/FLD due to delinquency penalties; and (2) the collection of delinquent penalties is part of his duties as a BIR officer.[62]

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58 Id., pp. 31-33.
59 Supra at note 55.
60 Exhibit "R-24", Division Docket, Volume I, pp. 382-388.
61 TSN dated 25 January 2024, pp. 43-47.
62 Id., pp. 48-49

In his re-cross examination, RO Libunao declared: (1) the reason why he collected an amount larger than that indicated in the WDL is due to running interest and penalties; (2) he has a supporting computation for the amount collected, thus, he only garnished ₱319,786.13 from RCBC, despite the fact that the available amount for collection is ₱632,687.55; (3) the said computation was not presented to petitioner; and (4) the amount he collected as interest and penalties can be seen in the BIR Form No. 0605[63] (**Payment Forms**) signed by then Chief of Collection Division Alicia Palmaria (**Chief Palamaria**).[64]

Later, the First Division noted the "[FOE]"[65], that respondent belatedly filed on 08 February 2024.[66] Petitioner filed its Comment/ Opposition thereto on 21 February 2024.[67] On 20 March 2024, the First Division issued a Resolution that admitted all of respondent's exhibits.[68]

On 23 April 2024, petitioner filed its Memorandum[69], while respondent failed to file his or her Memorandum.[70] On 13 May 2024, the case was then deemed submitted for decision.[71]

ISSUES

The parties put forward the following issues for this Court's resolution –

I.

WHETHER PETITIONER FUJITEC, INC. IS LIABLE TO PAY ASSESSED DEFICIENCY INCOME TAX (IT), VALUE-ADDDED TAX (VAT), AND WITHHOLDING TAX ON COMPENSATION (WTC) IN THE TOTAL AMOUNT OF ₱22,351,906.06, FOR THE CALENDAR YEAR (CY) 2018;

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63 BIR Records, pp. 362-372.
64 TSN dated 25 January 2024, pp. 49-58.
65 See Notice dated 27 February 2024, Division Docket, Volume II, p. 569.
66 Id., pp. 545-554.
67 Id., pp. 557-567.
68 See Resolution dated 20 March 2024, id., pp. 574-576.
69 Id., pp. 582-629.
70 See Records Verification dated 26 April 2024, id., p. 630.
71 See Notice dated 13 May 2024, id., p. 633.

II.
WHETHER PETITIONER FUJITEC, INC. IS ENTITLED TO A REFUND IN THE TOTAL AMOUNT OF ₱28,191,790.45; AND

III.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE IS LIABLE FOR PAYMENT OF DAMAGES AND 6% LEGAL INTEREST TO PETITIONER FUJITEC, INC.

ARGUMENTS

In support of the petition, petitioner claims that respondent's assessment against it was done in violation of its right to due process. According to petitioner, it is mandatory that a taxpayer be afforded due process by duly serving it with the PAN and FAN/FLD. Without such proper service, the said assessment is null and void precluding the Government from collecting any deficiency taxes by issuing a WDL.[72]

Petitioner adds that respondent completely failed to overcome the burden of proving that he or she had indeed served it with a copy of the PAN and FAN/FLD for CY 2018.[73] Respondent's mere reliance on a computer printout from the LBC's website shows his or her failure to exercise the degree of diligence or effort required in making sure that the alleged PAN and FAN/FLD were actually received.[74]

Petitioner explains further that since respondent proceeded to collect the taxes from its bank accounts despite the nullity of the assailed WDL, it is incumbent upon the latter to refund all the amount it collected on the basis of its void WDL.[75] Petitioner also claims that respondent is liable for payment of damages and 6% legal interest due to the following reasons: (1) it was not served a copy of the WOG; (2) unlawful collection was made during the pendency of its application for suspension of taxes; and (3) respondent collected an amount that exceeded that indicated in the WDL (in excess of ₱5,839,884.39).[76]

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[72] See Petitioner's Memorandum, id., pp. 595-596.
[73] Id., p. 599.
[74] Id., p. 610.
[75] Id., p. 612.
[76] Id., pp. 614-620.

Responding to petitioner's arguments, respondent prays for the dismissal of the present Petition. According to respondent, the due process requirements were observed in petitioner's assessment, it was duly served with the PAN and FAN/FLD. In addition, it failed to prove that it was not served with the PAN and FAN/FLD.[77]

Respondent also claims that the subject deficiency tax assessment has already become final, executory and demandable after petitioner failed to file a protest. Thus, the instant case should be dismissed for lack of jurisdiction, as the 30-day reglementary period to file an administrative protest is jurisdictional.[78]

Finally, he or she maintains that tax assessment enjoys a presumption of regularity and correctness, and petitioner utterly failed to overcome such presumption.[79]

RULING OF THE COURT

At the outset, it is underscored that respondent questions the Court's jurisdiction, arguing that petitioner failed to file a protest. Put differently, it failed to exhaust the administrative remedies available to it.

We do not agree with respondent.

The CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[80] Section 7(a)(1) of Republic Act (**RA**) No. 1125[81], as amended by RA 9282[82], provides:

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77 See Respondent's Answer (With Comment/Opposition), id., Volume I, pp. 223-242.

78 Id., pp. 230-233.

79 Id., pp. 234-236.

80 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

81 AN ACT CREATING THE COURT OF TAX APPEALS.

82 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

...

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[.]**[83]

...

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[84]

Based on the foregoing provision, this Court has jurisdiction over the decisions of respondent in cases, not only those "involving disputed assessments, and refunds of internal revenue taxes, fees or other charges, penalties in relation thereto" but also regarding "other matters arising under the [NIRC] or other laws administered by the [BIR]."

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[85], 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 warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.

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83 Italics in the original text, emphasis and underscoring supplied.

84 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

85 G.R. No. 162852, 16 December 2004; Citations omitted, emphasis supplied and italics in the original text.

> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court.
>
> ...

The foregoing jurisprudential pronouncements confirm that this Court's appellate jurisdiction is not limited to cases involving respondent's decisions on matters relating to assessments or refunds. The law also provides the Court's appellate jurisdiction over any case that could arise from the NIRC of 1997, as amended, or and other related laws that the BIR administers.

In the case at bar, the WDL's issuance is a matter that arose out of respondent's implementation of the provisions of the NIRC of 1997, as amended. Such being the case, this Court has jurisdiction to take cognizance of the present Petition.

Anent the timeliness of the Petition, a taxpayer adversely affected by a decision or inaction of the CIR should appeal to this Court within 30 days from receipt of the decision or after the expiration fixed by law for action as referred to in Section 7(a)(1) of the Tax Code, as amended.[86] Thus, petitioner has 30 days from receipt of the WDL to file a Petition for Review. The instant Petition was thus timely filed on <u>26 August 2022</u>, counted from petitioner's receipt of respondent's WDL on 02 August 2022.

We now proceed to the merits of the case.

RESPONDENT FAILED TO PROVE THAT PETITIONER RECEIVED THE PRELIMINARY ASSESSMENT NOTICE (PAN), FINAL ASSESSMENT NOTICE (FAN) AND FORMAL LETTER OF DEMAND (FLD).

---

86 Republic Act No. 1125, as amended.

Here, respondent insists that the PAN and FAN/FLD were validly served at petitioner's registered address through a reputable courier service (LBC). He or she further argues that petitioner presented no evidence to prove that it was not served with the PAN and FAN/FLD. According to respondent, allegations unsubstantiated by evidence are not equivalent to proof.[87]

We do not share respondent's argument.

The rule is that once a taxpayer denies receipt of the BIR's issuances, the burden of proof rests upon the latter to prove that these issuances have been actually received. In the case of *Barcelon, Roxas Securities Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[88] (**Barcelon**), citing the case of *Gonzalo P. Nava v. Commissioner of Internal Revenue*[89], the Supreme Court emphasized that it is imperative for the BIR to satisfactorily prove the release, mailing or sending of the assessment, *viz*:

> ...
>
> Jurisprudence is replete with cases holding that if the **taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** The **onus probandi was shifted to respondent to prove by contrary evidence** that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.
>
> ...
>
>> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative **that the release, mailing or sending of the notice be clearly and satisfactorily proved.** Mere notations made without the taxpayer's intervention, notice or control, **without adequate supporting evidence cannot suffice**; otherwise, the

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[87] See pars. 27 and 28, Answer (With Comment/Opposition), Division Docket, Volume I, p. 227.

[88] G.R No. 157064, 07 August 2006; Citations omitted and emphasis supplied.

[89] G.R No. L-19470, 30 January 1965.

> taxpayer would be at the mercy of the revenue offices, without adequate protection or defense."
>
> ...

In the case of *Republic of the Philippines v. The Court of Appeals and Nielson & Company, Inc.*[90] and in *Barcelon*[91], the Supreme Court also held that a party favored by the presumption has the burden of proving that the addressee received the mailed letter in cases when there is a direct denial of the receipt of the mail. Consistently, the Supreme Court has held that it is a due process requirement that the taxpayer actually receives the assessment, to wit:

> ...
>
> It must be noted, however, that the foregoing rule requires that the notice be sent <u>to the taxpayer</u>, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, <u>due process requires that it must be served on and received by the taxpayer</u>.[92]
>
> ...

Respondent failed to discharge his or her burden of proof.

Firstly, in trying to prove valid service of the FAN/FLD, respondent offered in evidence a printout from LBC's online shipment tracker.[93] However, the said printout only appears to negate or contradict respondent's assertion. We quote below the relevant portion of this exhibit, *viz*:

---

[90] G.R No. L-38540, 30 April 1987.

[91] Supra at note 88.

[92] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G. R No. 155541, 27 January 2004; Citations omitted, italics and underscoring in the original text.

[93] Exhibit "R-12", Print Out Copy of LBC Express Inc.'s Track & Trace online page result for Tracking Receipt No. 1270 7554 8758, BIR Records, p. 233. (Description taken from respondent's FOE, Division Docket, Volume II, p. 549)

...
Released to authorized representative JOSE ATANAS.
...

As the records bear, respondent had assumed that Atanas is petitioner's authorized representative. We also quote below the pertinent portion of RO Montilla's testimony, to wit:

...
ATTY. SIA:

Okay.

Q: Now, Madam Witness, **you also do not know whether or not Jose Atanas, as appearing in the LBC website indeed an employee of petitioner Fujitec, correct?**

MS. MONTILA:

A: **Yes, Attorney.**

ATTY. SIA:

Q: And, Madam Witness, since you were also not present when the time that the mail covered by the Tracking Receipt No. 127075588758 allegedly containing the FLD was delivered, you have **no opportunity to personally ascertain whether or not Jose Atanas is actually an authorized representative of petitioner Fujitec, correct?**

MS. MONTILA:

A: **Yes, Attorney**. But I believe, LBC will not release such document if the person was not an authorized representative of the said corporation.[94]

...

Upon examination of Exhibit "R-17" or Certified True Copy of Activity Log of Barangay San Dionisio accomplished by Desk Officer Amy Edrosolano, Atanas is not petitioner's employee but a security guard at petitioner's place of business. The said Activity Log reads:

...
Nagtungo sa ating tanggapan ang representative ng BIR Region 8B, upang mag pa-assist na mag hatid ng [WDL] sa nasabing company.

---

94 TSN dated 25 January 2024, pp. 29-30; Emphasis supplied.

> Agad naman siyang sinamahan ng mga tanod para ipareceive ang nasabing [WDL], ngunit hindi ito tinanggap ng kanilang representative na si [Francisco], Senior Accountant ng nasabing company. Na hindi raw nila nareceive ang mga notice na pinadala sa kanila ng BIR Region 8B.
>
> **Ngunit may katibayan sila na natanggap ito ng guwardiya ng nasabing company at ito ay si Jose Atanas.**[95]
>
> ...

In *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[96] (**Mannasoft**), where a security guard also received the BIR's issuances, the Supreme Court was categorical in ruling that a security guard lacks the proper authority to represent a corporation. It held, thusly:

> ...
>
> The parties stipulated that the FAN was personally served upon **Mr. Angelo Pineda, who, at that time, was merely the reliever security guard at petitioner's premises**. However, as astutely observed by the CTA Third Division in its Resolution dated March 16, 2017, the stamp receipt found on the FAN shows that there was no indication of his authority to act on behalf of petitioner, contrary to the clear requirement under Section 3.1.4 of Revenue Regulations No. 12-99. **The fact that Angelo Pineda is not even an employee of petitioner serves to further exacerbate his lack of authority to represent the corporation.**
>
> Notably, this defect in complying with the requirements of due process was not cured by the fact that the taxpayer was able to file a protest to the FAN. This Court has repeatedly enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices in order to uphold the taxpayers' constitutional rights.
>
> **Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect. Consequently, given that the assessment notices were void, the resulting WDL is likewise invalid and without effect.**

---

95 BIR Records, pp. 261-262; Emphasis supplied.

96 G.R No. 244202, 10 July 2023; Citations omitted and emphasis supplied.

As to respondent's service of the PAN, We note that, though RO Montila testified that it was served *via* LBC, he or she did not offer any documentary evidence that he or she actually mailed the said PAN to petitioner. Upon examination of the Acknowledgement Receipt[97] attached to Exhibit "R-6" or to the PAN[98], it appears that the said document was not accomplished. We also quote below the pertinent portion of RO Montila's testimony, to wit:

> ...
> ATTY. SIA:
>
> Q: And, you **sent the PAN through LBC**, is that what you said?
>
> MS. MONTILA:
>
> A: **Yes, Attorney**. That is correct.[99]
>
> ...

Although BIR issuances may be sent *via* reputable couriers, such service does not conclusively prove receipt. As the records bear: (1) the FAN/FLD was served to a security guard who could not be validly deemed as petitioner's authorized representative; and (2) respondent proffered no evidence to establish petitioner's actual receipt of the PAN.

As it is, respondent could only solely rely on Exhibit "R-12"[100] to prove the valid service of the FAN/FLD on petitioner. Unfortunately, this piece of evidence failed to achieve the purpose as it, instead, showed the opposite. It only proved that it was served on a person who could not be deemed as petitioner's representative.

The BIR's own regulations, particularly Section 3.1.6 of Revenue Regulations (**RR**) No. 12-99[101], as amended by RR No. 18-2013[102], provide the following:

---

97 BIR Records, p. 197.
98 Id., pp. 198-203.
99 TSN dated 25 January 2024, p. 23; Emphasis supplied.
100 Supra at note 93.
101 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
102 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

...

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

...

3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

...

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. **A copy of the notice, may also be sent through reputable professional courier service.** If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or **the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**

...

Respondent's other exhibits, particularly, Exhibits "R-8", "R-9", and "R-10"[103] or the FAN/FLD highlighted respondent's failure to comply with the above-mentioned requirements, namely: (1) the server did not accomplish the bottom portion of the notice, leaving the printed name, signature and designation of the person who received the subject ANs, and the date of receipt blank; and (2) the official receipt (OR) issued by

---

103

Exhibit No.	Description
"R-8"	Assessment Notice Demand No. IT- eLA30367-18-22-022, dated 14 January 2022
"R-9"	Assessment Notice Demand No. VT- eLA30367-18-22-022, dated 14 January 2022
"R-10"	Assessment Notice Demand No. WC-eLA30367-18-22-022, dated 14 January 2022

LBC contains no identifiable details of the transaction, merely noting "document" without further specifics.

Moreover, respondent's other pieces of evidence also did not include any written report, certification, or any other document from LBC regarding the service of the subject PAN. Therefore, We cannot agree with respondent's claim that there was a valid service of the PAN and FAN/FLD on petitioner.

Succinctly, the requirement of informing the taxpayer of the assessment is **mandatory** in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99[104], as amended, by RR No. 18-2013[105], the relevant portions of which are quoted hereunder for ready reference:

> ...
> **SEC. 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 taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**[106]
>
> ...
>
> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX "A" hereof).

---

104 Supra at note 101.
105 Supra at note 102.
106 Emphasis supplied and italics in the original text.

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

...

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based;** ***otherwise, the assessment shall be void*** (see illustration in ANNEX "B" hereof).

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[.][107]

...

Additionally, while respondent insists that petitioner failed to prove that it was not served with the PAN and FAN/FLD, it remains true that it, in fact, denied receiving them. In light of petitioner's denial of receipt, the burden of proof regarding service on petitioner necessarily shifted to respondent. However, the latter failed to discharge this burden. Worse, respondent's evidence had even contradicted his or her own claim.

For respondent's failure to inform petitioner of the facts and the law on which the assessment was made, through the valid service of the PAN and FAN/FLD, as mandated under the NIRC of 1997, as amended, a violation of due process occurred. This violation renders the subject assessment void and of no legal effect.

SINCE THE WARRANT OF DISTRAINT AND/OR LEVY (WDL) IS VOID, PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT CLAIMED.

---

[107] Emphasis supplied and italics in the original text.

A void assessment bears no valid fruit.[108] The law imposes a substantive, not merely a formal requirement.[109] To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[110] And since the PAN and the FAN/FLD are void, the WDL is likewise void.

As regards petitioner's refund claim, the Supreme Court ruled in the case of *Commissioner of Internal Revenue v. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*[111] that it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment be resolved jointly with a claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable, to wit:

> ...
>
> **Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits.** If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> **Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund**, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.
>
> ...

---

108 *Commissioner of Internal Revenue v. Azucena T. Reyes*, G. R Nos. 159694 and 163581, 27 January 2006.

109 *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, 10 December 2014.

110 *Commissioner of Internal Revenue v. BSAF Coating + Inks Phils., Inc.*, G.R. No. 198677, 26 November 2014.

111 G.R. No. 106611, 21 July 1994; Citations omitted and emphasis supplied.

> In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein.
>
> The Court cannot end this adjudication without observing that what caused the Government to lose its case in the tax court may hopefully be ascribed merely to the ennui or ineptitude of officialdom, and not to syndicated intent or corruption. The evidential *cul-de-sac* in which the Solicitor General found himself once again gives substance to the public perception and suspicion that it is another proverbial tip in the iceberg of venality in a government bureau which is pejoratively rated over the years. What is so distressing, aside from the financial losses to the Government, is the erosion of trust in a vital institution wherein the reputations of so many honest and dedicated workers are besmirched by the acts or omissions of a few. Hence, the liberal view we have here taken *pro hac vice*, which may give some degree of assurance that this Court will unhesitatingly react to any bane in the government service, with a replication of such response being likewise expected by the people from the executive authorities.
>
> ...

As earlier discussed, the assessment against petitioner for CY 2018 is void, due to respondent's failure to validly serve both the PAN and the FAN/FLD, consequently the WDL is likewise void; hence, respondent has no right to collect the amount of ₱28,191,790.45 from petitioner's garnished deposit account from its various banks (BDO, Metrobank, Security Bank, RCBC).

Respondent has erroneously/illegally collected the garnished amount. Accordingly, petitioner's claim for refund is proper.

RESPONDENT IS NOT LIABLE FOR PAYMENT OF DAMAGES AND 6% LEGAL INTEREST TO PETITIONER.

Petitioner posits that the assessment and collection of deficiency taxes against it are highly irregular, more so that respondent actually collected more than what was indicated in the WDL. According to it, the amount indicated in the WDL was only ₱22,351,906.06 but respondent collected ₱28,191,790.45.

As regards the payment of interest on the amount to be refunded, the Supreme Court in *Atlas Fertilizer Corporation v. Commissioner of Internal Revenue, et al.*[112] ruled that for payment of interest to accrue on the amount to be refunded to taxpayer, it must either be authorized by law or the collection of the tax was attended by arbitrariness, *viz*:

> ...
> But the more important consideration is the well settled rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest. Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.
> ...

None of these two circumstances prevail in the case at bar.

The NIRC of 1997, as amended, does not hold respondent liable for interest in case of taxes improperly collected.[113] In the absence of any provision of law providing for the same, this Court cannot order the payment of interest on taxes refunded. Neither may petitioner invoke arbitrariness on the part of respondent. An action is not arbitrary when it is exercised honestly and upon due consideration where there is room

---

112 G.R. Nos. L-26686 & L-26698, 30 October 1980; Citations omitted.

113 **SEC. 229**. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

for two opinions, however much it may be believed that an erroneous conclusion was reached. On the contrary, arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.[114]

In addition, a review of the records reveals that respondent nevertheless attempted to serve the WOG upon petitioner and comply with Section 208[115] of the NIRC of 1997, as amended. Exhibit "R-21"[116] or the mailing envelope which contained the WOG addressed to petitioner with attached Registry Receipt No. RE 624 030 241 ZZ shows the annotation - "RTS/refused/9-2-22". We also quote the relevant portion of RO Libunao's Judicial Affidavit:[117]

> ...
>
> Q22: **What did you do, if any, upon issuance of the Warrant of Garnishment?**
>
> A: **I served an original copy of the [WOG] to petitioner on 26 August 2022, via registered mail. However, it was returned to me by the Philippine Postal Corporation due to petitioner's refusal to receive the same.** I also served copies of the [WOG] to different banks.[118]
>
> ...

As to petitioner's contention that respondent capriciously collected the total amount of ₱28,191,790.45, despite the fact that the amount indicated in the WDL is merely ₱22,351,906.06. It appears that there is no arbitrariness that can be imputed on respondent due to the following: (1) he or she was of the position that the excess amount of ₱5,839,884.39 pertains to interests and penalties; (2) the collection made was based on a computation which he or she opines to be valid; and (3) when RO Libunao considered that he was already able to collect the needed amount from the said computation, he stopped his collection

---

114 *Philex Mining Corporation v. Commissioner of Internal Revenue and the Court of Appeals*, G.R. No. 120324, 21 April 1999.

115 **SEC. 208**. *Procedure for Distraint and Garnishment*. — ...

...

Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall tun over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

116 BIR Records, p. 314B.

117 Supra at note 60, p. 386.

118 Emphasis in the original text and supplied.

effort and did not proceed to collect the remainder.[119] We quote the pertinent portion of RO Libunao's testimony[120]:

> ...
>
> ATTY. SIA:
>
> Q: You said that the reason why you collected the amount larger than the one indicated in the subject WDL is because of the **running interest and penalties**, is that correct?
>
> MR. LIBUNAO:
>
> A: Yes, Attorney.
>
> ATTY. SIA:
>
> Q: Do you have the computation of that by the time that you collected these from the bank accounts of petitioner?
>
> MR. LIBUNAO:
>
> A: I have the computation that's why I didn't get the exceeded from my computation. **To clarify the garnishment amount on the bank of RCBC, the available amount is ₱632,687.55, but I only garnished the amount of ₱319,786.13** to avoid excessive penalties to be dealt by the BIR.[121]
>
> ...

Thus, the query – was any law or rule violated when respondent collected the garnished amount during the pendency of the proceeding on the Motion for Suspension? The Court responds in the negative.

As a rule, injunction is not available to restrain the collection of tax pursuant to Section 218 of the NIRC of 1997, as amended, which provides:

> ...
>
> **SEC. 218.** *Injunction not Available to Restrain Collection of Tax.* — No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code.
>
> ...

---

119 The remainder amounted to ₱312,901.42. This is the difference between the amount available for garnishment - ₱632,687.55 and the actual amount collected - ₱319,786.13 by RO Libunao.

120 Supra at note 64, pp. 49-50.

121 Emphasis supplied.

However, Section 11 of RA 1125[122], as amended by RA 9282[123], allows the suspension of collection of taxes if in the Court's opinion, the collection may jeopardize the interest of the government and/or the taxpayer, to wit:

> ...
>
> **Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — ...**
>
> ...
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however,* **That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding <u>may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.</u>**[124]
>
> ...

Thus, the general rule and the exception to the suspension of collection of taxes was incorporated in Rule 10 of the RRCTA[125] in this wise:

> ...
>
> **RULE 10**
>
> *SUSPENSION OF COLLECTION OF TAX*
>
> SECTION 1. *No suspension of collection of tax, except as herein prescribed.* – No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed.
>
> SECTION 2. *Who may file.* – Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or

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122 Supra at note 81.
123 Supra at note 82.
124 Emphasis and underscoring supplied.
125 Supra at note 5.

by whatever means, as provided under existing laws, may jeopardized the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability.[126]

...

Pending resolution by this Court of petitioner's Motion for Suspension, respondent is not precluded from collecting the said amount. In view of the foregoing, it is clear that there is no basis for the award of legal interest on the garnished and collected amount.

WHEREFORE, with the foregoing premises, the Petition for Review and Supplemental Petition for Review filed by petitioner Fujitec, Inc. on 26 August 2022 and 10 November 2022, respectively, are hereby **PARTIALLY GRANTED.** Accordingly, the deficiency Income Tax, Value-Added Tax, and Withholding Tax on Compensation for the calendar year ending 31 December 2018, in the aggregate amount of ₱22,351,906.06, as found in the Warrant of Distraint and/or Levy No. RR8B-2022-07-21-00072 dated 02 August 2022, are hereby **CANCELLED** and **SET ASIDE.**

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ORDERED TO REFUND** the amount of ₱28,191,790.45 in favor of petitioner representing erroneously collected taxes.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

126 Emphasis and italics in the original text.

LANEE S. CUI-DAVID
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