REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ESS MANUFACTURING COMPANY, INC., *Petitioner,*	**CTA Case No. 10763**
	Members:
- versus -	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, and **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2025 4:28 p.m.

x- -x

DECISION

REYES-FAJARDO, *J.*:

Under consideration is the Petition for Review[1] dated February 9, 2022, filed by ESS Manufacturing Company, Inc., praying for the nullification of the Warrants of Garnishment dated January 3, 2022 issued by the Bureau of Internal Revenue against it, for alleged deficiency internal revenue taxes covering Taxable Year (TY) 2016.

FACTS

Petitioner ESS Manufacturing Company, Inc. is a corporation with address at 3F Exchange Corner Building, 107 V.A. Rufino Street cor. Esteban and Bolanos Streets, Legazpi Village, Barangay San Lorenzo, Makati City.[2] It is registered with the BIR under Taxpayer Identification Number 217-995-012-000.[3]

---

1 Docket, pp. 7-31.
2 Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues. *Id.* at p. 330.
3 Exhibit "P-3." *Id.* at p. 47.

The BIR, through respondent, is the agency of the government tasked with the enforcement of revenue laws and collection of taxes and duties.[4]

On September 6, 2017, petitioner received[5] Regional Director Glen A. Geraldino's Letter of Authority (LOA)[6] dated August 29, 2017, authorizing Revenue Officer Raymond Pasco (RO Pasco) and Group Supervisor Tadjuding Guiling to examine its books of account and other accounting record, for the period January 1, 2016 to December 31, 2016.

On December 20, 2019, Regional Director Maridur V. Rosario (RD Rosario) issued a Preliminary Assessment Notice with Details of Discrepancies (PAN), encapsulating the proposed deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) against petitioner for TY 2016.[7]

On January 17, 2020, petitioner received[8] RD Rosario's Formal Letter of Demand with Details of Discrepancies, and Final Assessment Notices (FLD/FAN), all dated January 14, 2020, assessing the former for deficiency IT, VAT, EWT, and WTC for TY 2016.[9]

On June 4, 2021, RD Rosario issued a Final Decision on Disputed Assessment FDDA-095-RR8A-RDO50-2016-eLA201500084254-A.N. 306 (FDDA), demanding payment of deficiency IT, EWT, and WTC for TY 2016 on petitioner.[10]

On January 3, 2022, the BIR issued Warrants of Garnishment (WOGs)[11] addressed to Philtrust Bank, Phil. Bank of Commerce, China Banking Corporation, BPI - Family Savings Bank, Bank of Philippine Islands, Phil. Bank of Communications, Unionbank of the Philippines, Development Bank of the Philippines, HSBC, East West

---

4 See Par. 2, Stipulated Facts, JSFI. *Id.* at p. 330.
5 See Par. 3, Stipulated Facts, JSFI. *Ibid.*
6 Exhibit "R-2." BIR Records, p. 1.
7 Exhibit "P-5." Docket, pp. 140-144.
8 Par. 5, Stipulated Facts, JSFI. *Id.* at p. 331.
9 Exhibit "P-7." *Id.* at pp. 67-75. See also Exhibits "R-9" to "R-14," BIR Records, pp. 666-674.
10 Exhibit "P-15." BIR Records, pp. 734-736.
11 BIR Records, pp. 769-800.

Banking Corporation, Banco De Oro Universal Bank and Security Bank Corporation, seeking to collect the deficiency IT, EWT, and WTC for TY 2016 embodied on RD Rosario's FDDA on petitioner.

On January 12, 2022, petitioner was informed by Security Bank Corporation that its bank account at said bank was garnished, through the BIR's WOG dated January 3, 2022.[12]

On February 11, 2022, petitioner filed its Petition for Review with Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction to Enjoin the Enforcement of the Warrant of Garnishment,[13] docketed as CTA Case No. 10763, raffled before the Court of Tax Appeals (CTA) – Second Division.

On March 24, 2022, a hearing was held on petitioner's Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction to Enjoin the Enforcement of the Warrant of Garnishment. There, petitioner presented its Senior Manager – Finance Group Eugenmar P. Morales[14] in support thereof.

On March 31, 2022, petitioner filed its Formal Offer of Documentary Exhibits,[15] in support of its Urgent Motion, which was met by Respondent's Comment/Opposition (To the Petitioner's Formal Offer of Documentary Exhibits)[16] posted on April 8, 2022.

On May 17, 2022, respondent filed his Answer (To the Petitioner's Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction to Enjoin the Enforcement of the Warrant of Garnishment).[17]

Under Resolution[18] dated May 31, 2022, the exhibits offered by petitioner in support of its Urgent Motion were admitted, except Exhibits "P-2," "P-4," "P-6," "P-6-1," "P-8," "P-8-1," "P-9," "P-9-1,"

---

12 Answer to Question No. 15, Judicial Affidavit of Eugenmar O. Morales (Morales for brevity). Exhibit "P-1," *id.* at pp. 35-36.

13 *Supra* note 1.

14 Exhibit "P-1." Docket, pp. 35-45. See Order dated March 24, 2022, *id.* at pp. 122-123.

15 *Id.* at pp. 127-139.

16 *Id.* at 161-167.

17 *Id.* at pp. 177-190.

18 *Id.* at pp. 251-252.

qn

"P-10," "P-13," and "P-14," for failure to present the originals thereof for comparison.

On June 8, 2022, petitioner filed a Motion for Summary Judgment,[19] *sans* respondent's comment.[20]

By Resolution[21] dated June 23, 2022, petitioner's Urgent Motion was denied, for lack of merit.

Through Resolution[22] dated September 8, 2022, petitioner's Motion for Summary Judgment was likewise denied.

On October 20, 2022, pre-trial conference[23] was held, whereby the parties jointly submitted, and We adopted the issue to be addressed in this case. The scheduled presentation of the parties' evidence and the date of commissioner's hearing for the marking of their respective exhibits were as well set. Additionally, the parties were directed to submit their Joint Stipulation of Facts and Issues on or before November 21, 2022.

On November 17, 2022, the parties submitted their Joint Stipulation of Facts and Issues,[24] which was admitted and approved *via* Resolution[25] dated December 5, 2022. On the basis thereof, a Pre-Trial Order[26] was issued on March 24, 2023.

Under Resolution[27] dated May 29, 2023, CTA Case No. 10763 was transferred from the CTA - Second Division, to the CTA – Third Division.

Trial followed.

---

19 *Id.* at pp. 235-249.

20 Records Verification Report dated August 9, 2022 issued by the CTA – Judicial Records Division. *Id.* at p. 264.

21 *Id.* at pp. 256-261.

22 *Id.* at pp. 267-272.

23 Order dated October 20, 2022. *Id.* at pp. 326-327.

24 *Id.* at pp. 330-332.

25 *Id.* at p. 334.

26 *Id.* at pp. 339-344.

27 See Notice prepared by Executive Clerk of Court III Jesus P. Inocando, Jr. *Id.* at p. 351.

qn

On September 6, 2023, the hearing for petitioner's presentation of evidence was held. There, the latter's counsel made the following manifestations: (1) the Judicial Affidavit of Eugenmar P. Morales dated February 9, 2022 in support of petitioner's Urgent Motion, would serve as his direct testimony in the main case; and (2) the Formal Offer of Evidence in support of the same Urgent Motion shall constitute as petitioner's evidence for the main case. In view thereof, petitioner was directed to file a written manifestation, embodying said representations on or before September 11, 2023.[28]

On September 9, 2023, petitioner filed its Manifestation and Compliance, putting into writing its counsel's representations in the hearing held on September 6, 2023,[29] which was noted *via* Minute Resolution[30] dated September 29, 2023.

On February 13, 2024, a hearing was held, whereby respondent presented RO Pasco[31] as his witness.

On March 1, 2024, Respondent's Formal Offer of Evidence[32] was filed, to which petitioner registered its Comments/Objections (To the Respondent's Formal Offer of Evidence)[33] on March 13, 2024.

By Resolution[34] dated May 23, 2024, the evidence offered by respondent was admitted.

On July 15, 2024, CTA Case No. 10763 was submitted for decision,[35] considering: (1) Memorandum (For petitioner ESS Manufacturing Company Inc.)[36] filed on June 21, 2024; and (2) respondent's Memorandum[37] filed on June 28, 2024.

---

28 Order dated September 6, 2023. *Id.* at pp. 368-369.
29 *Id.* at pp. 370-372.
30 *Id.* at p. 373.
31 Judicial Affidavit of Raymond Pasco dated October 14, 2022 (Exhibit "R-16"). *Id.* at pp. 275-284. JA of Pasco for brevity.
32 *Id.* at pp. 383-388.
33 *Id.* at pp. 390-395.
34 *Id.* at pp. 398-399.
35 Minute Resolution dated July 15, 2024. *Id.* at p. 438.
36 *Id.* at pp. 402-417.
37 *Id.* at pp. 425-436.

ISSUES[38]

We are tasked to answer the following questions:

a. Are the Warrants of Garnishment enforced by respondent valid? and

b. Is petitioner liable to pay the alleged deficiency IT, EWT, and WTC in the total amount of ₱37,756,661.02 for TY 2016?

ARGUMENTS

Petitioner maintains that the BIR invalidly resorted to constructive service of the FDDA dated June 4, 2021. Being so, the taxes found therein are void. As a result, the WOGs seeking to collect taxes stated in said FDDA, are also void.

Respondent counters that since petitioner failed to timely elevate RD Rosario's FDDA, within the thirty (30)-day reglementary period to appeal in Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, the CTA in Division failed to acquire jurisdiction over CTA Case No. 10763.

Assuming *arguendo* that the CTA in Division has jurisdiction over this case, respondent nonetheless contends that the WOGs may be implemented against petitioner, because the latter failed to pay the deficiency internal revenue taxes for TY 2016 embodied in RD Rosario's FDDA dated June 4, 2021.

RULING

The Petition is impressed with merit.

First. Did We obtain jurisdiction over CTA Case No. 10763?

Yes.

---

38 See Issue[s] to be resolved, JSFI. *Id*. at p. 331.

Section 7(a)(1) of Republic Act (RA) No. 1125,[39] as amended by RA No. 9282, 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 **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;
>
> ...[40]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[41] elucidated that the CTA in Division has jurisdiction over respondent, or his authorized representative's decision or action involving other matters arising from the NIRC, as amended, *inter alia*. One of the matters set forth in Section 2 of the same Code is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[42] This includes the issuance of the rules, regulations, and measures in pursuit thereof, [43] including garnishment of bank accounts, mentioned in Section 208[44] of the same Code. In addition,

---

39 An Act Creating the Court of Tax Appeals.

40 Boldfacing supplied.

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

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

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

44 **Section 208.** *Procedure for Distraint and Garnishment.* - The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.

...

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.

qr

Section 11 of RA No. 1125, as amended by RA No. 9282, commands that appeal thereon must be taken by the aggrieved party within thirty (30) days from notice:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....
>
> ...[45]

On January 12, 2022, petitioner was informed by Security Bank Corporation that its bank account at said bank was garnished, through the BIR's WOG dated January 3, 2022.[46] Counting thirty (30) days from January 12, 2022, petitioner had until February 11, 2022 to seek judicial redress. Therefore, the timely filing[47] of its Petition for Review on February 11, 2022, endowed Us with jurisdiction over CTA Case No. 10763.

Respondent argues that We have no jurisdiction over CTA Case No. 10763 because petitioner failed to appeal RD Rosario's FDDA, within the thirty (30)-day reglementary period under Section 228 of the NIRC, as amended.

This is disingenuous.

Our jurisdiction under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, is not confined to respondent's decision on disputed assessment. Said provision likewise recognizes

---

45 Boldfacing supplied.
46 *Supra* note 12.
47 *Supra* note 13.

respondent's action on other matters arising from the NIRC, as amended, and other laws administered by the BIR. Among these matters is the BIR's act of collecting internal revenue taxes, such as the WOG.

Here, petitioner's constant position and corresponding evidence point out that its recourse before Us was triggered by the BIR's WOG. Specifically, witness Morales said that the BIR sent its WOG to, among others, Security Bank Corporation, and the latter informed petitioner that its bank account was garnished, despite not having received the FDDA from which it is based.[48] Further, petitioner counted the 30-day period to appeal, from the date it was informed by Security Banking Corporation of the garnishment of its bank account on January 12, 2022.[49] In addition, the issues[50] and corresponding discussion,[51] as well as the prayer[52] all raised by petitioner in its Petition, orbits around the legality of the WOG's implementation against it. Without doubt, the WOG being enforced upon petitioner is the matter primarily being assailed by the latter, over which We have jurisdiction, under Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282.

Second. Are the deficiency internal revenue taxes for TY 2016 found in RD Rosario's **FDDA**, and the WOGs enforcing said **FDDA** valid?

No.

Petitioner claims that it did not receive RD Rosario's FDDA.[53] Respondent says otherwise, retorting that RO Pasco validly served said FDDA by way of constructive service, because no person could be found on petitioner's registered address at 3F Exchange Corner Building, 107A VA Rufino Street cor. Esteban and Bolanos Streets, Legazpi Village, Barangay San Lorenzo, Makati City.[54]

We find for petitioner.

---

48 *Supra* note 12.
49 Paragraphs 2.5 and 2.6, Petition for Review. Docket, p. 9.
50 Page 8, Petition for Review. *Id.* at p. 14.
51 Pages 8-23, Petition for Review. *Id.* at pp.14-29.
52 Page 24, Petition for Review. *Id.* at p. 30.
53 Answer to Question No. 16, JA of Morales (Exhibit "P-16"). *Id.* at pp. 41-42.
54 Answer to Question Nos. 38 and 39, JA of Pasco. *Id.* at p. 281.

qf

Indeed, one of the methods of substituted service of BIR notices, including the FDDA, is through constructive service thereof, found in subsection 3.1.6 of Revenue Regulations (RR) No. 18-2013,[55] which pertinently reads:

> 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:
>
> ...
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> ...
>
> **Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal.** The notice shall then be given to said barangay official. Such **facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.**[56]
>
> *"Disinterested witnesses"* refers to persons of legal age other than employees of the Bureau of Internal Revenue.

To validly effectuate substituted service of BIR notice (PAN/FLD/FAN/FDDA), by way of constructive service, the following conditions must concur: *one,* there is no person found at the taxpayer's registered or known address, *or,* if the taxpayer is found in the registered or known address, the latter refused to receive such BIR notice; *two,* presence of a barangay official *and* two disinterested witnesses, personally observing and attesting to said absence, or refusal to receive said BIR notice; *three,* such BIR notice must be given to said barangay official; and *four,* the fact of taxpayer's absence, or refusal to receive BIR notice, must be contained in said BIR notice, along with the names, official position, and signatures of the

---

55 Amending Certain Sections of Revenue Regulations No. 12-99.

56 Boldfacing ours.

disinterested witnesses. Of these four conditions, conditions *two, three,* and *four* were not met.

Petitioner's address per FDDA[57] dated June 4, 2021 and BIR Certificate of Registration[58] dated January 14, 2019 is at 3F Exchange Corner Building, 107 V.A. Rufino Street cor. Esteban and Bolanos Streets, Legazpi Village, **Barangay San Lorenzo**, Makati City. Yet, there is no showing that RO Pasco was accompanied by a barangay official from Barangay San Lorenzo and two disinterested witnesses to personally attest and observe on the fact of absence of any person at said address.

Instead, what was revealed by RO Pasco's testimony is that there is only one witness, *i.e.,* Ernesto Salazar, involved in the constructive service, and that what such witness observed and witnessed is that he left the FDDA to the wrong barangay and wrong barangay official, *i.e.,* Araceli M. Canlas, Barangay Secretary of **Barangay Bel-Air**, Makati City.[59] RO Pasco seconded said testimony in open court:

Atty. Omnes:	Okay. Now, Mr. Witness, do you have there the copy of your final decision on disputed assessment dated June 4, 2021?
Witness:	I have, attorney.
Atty. Omnes:	Mr. Witness, what is the address of ESS as stated in that FDDA?
Witness:	It's in 3rd floor, Exchange Corner Building, 107 V.A., Rufino St., cor., Legaspi Village, San Lorenzo, Makati City.
Atty. Omnes:	So, Mr. Witness[,] the registered address of ESS is within Barangay San Lorenzo of Makati City, correct?
Witness:	Yes, attorney.
Atty. Omnes:	Okay, now Mr. Witness[,] kindly refer to No. 40 of your Judicial Affidavit that

57 *Supra* note 10.
58 *Supra* note 3.
59 See Answer to Question No. 40, JA of Pasco (Exhibit "R-16"). Docket, p. 281.

	you did not find any person at the regisred address of ESS[;thus,] you proceeded to [effect] substituted service, is that right?
Witness:	Yes, attorney.
Atty. Omnes:	Now, Mr. Witness[,] to clarify what you mean by that statement is that you went to the office of Barangay Bel-Air and served the FDDA with Araceli Canlas, is that right?
Witness:	Yes, attorney.
Atty. Omnes:	Okay, Mr. Witness, and Ms. Araceli Canlas is the Assitant Barangay Secretary of Barangay Bel-Air, Makati City, right?
Witness:	Yes, attorney.
Atty. Omnes:	Mr. Witness, do you agree with me that Barangay Bel-Air, Makati City[,] and Barangay San Lorenzo, Makati City are two different barangays?
Witness:	Yes, attorney.
Atty. Omnes:	Okay, just two (2) more questions. Mr. Witness, kindly refer to Exhibit 'R-6-1'. I think its in page 737 of the BIR records. It's the Acknowledgment Receipt of the FDDA. Your Honor, may we request for the BIR Records? Mr. Witness, page 737 of the BIR records [pertain] to the acknoled[g]ment receipt of the FDDA. **In that acknowledgment receipt[,] how many witnesses signed that document?**
Witness:	**Only one (1) attorney.**
Atty. Omnes:	And that lone witness is Mr. Ernesto Salazar, correct?
Witness:	Yes, attorney.

...[60]

60 Pages 6-9, Transcript of Stenographic Notes dated February 13, 2024. Emphases ours.

Worse, the Acknowledgment of Receipt dated June 8, 2021[61] appended to RD Rosario's FDDA, exhibits the following defects: (1) it was signed by a single witness, *i.e.*, Ernesto Salazar, instead of two disinterested witnesses; and (2) the official position or designation of witness Ernesto Salazar was not specified therein; hence, it cannot be determined whether he is a *disinterested* witness; and (3) RO Pasco failed to accomplish the box pertaining to the reason for constructive service.

All these remarks veer towards a sole conclusion—RO Pasco failed to comply with the conditions for the validity of constructive service set forth in subsection 3.1.6. of RR No. 18-2013. Being so, RD Rosario's **FDDA** is **void** for being violative of petitioner's right to due process. As *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[62] puts it "... [s]trict compliance with the requirements of substituted service [of BIR notices] is essential in ensuring the right of the taxpayer to due process."

Accordingly, the WOGs[63] enforcing the 2016 deficiency internal revenue taxes specified in RD Rosario's **FDDA** are likewise void.

Third. Is petitioner liable for the deficiency internal revenue tax assessments for TY 2016 found on RD Rosario's **FLD/FAN**?

No.

Section 6(A) of the NIRC, as amended, commands that internal revenue taxes shall be paid upon notice and demand from respondent, or his duly authorized representative. *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc. (TOPI)*[64] explained that the notice and demand referred to in said provision is the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) issued to, and serve upon the taxpayer:

> **On the other hand, a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as [the FAN] is served, an obligation arises on the part of the taxpayer concerned to pay the amount**

61 Exhibit "R-15-2." BIR Records, p. 737.
62 G.R. No. 223767, April 24, 2023.
63 *Supra* note 11.
64 G.R. No. 227544, November 22, 2017. Citations omitted. Boldfacing supplied.

> **assessed and demanded.** It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% *per annum,* or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid. Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.

Commissioner of Internal Revenue v. Pacific Hub Corporation (PHC)[65] re-affirmed the foregoing dictum in *TOPI,* pronouncing in this wise:

> Jurisprudence instructs that the issuance of a warrant of distraint and/or levy must be premised first and foremost on the existence of delinquent taxes which, in turn, requires a final determination of the taxpayer's actual tax liability. **Indeed, this final assessment coupled with a formal demand to pay is what triggers an obligation on the part of the taxpayer concerned to pay the amount assessed and demanded, and also signals the reckoning point when penalties and interests begin to accrue.**

One of the preconditions for the validity and efficacy of the BIR's FLD/FAN against the taxpayer is that it must encapsulate a categorical demand for payment. *Commissioner of Internal Revenue v. Telstar Manufacturing Corporation (Telstar)* [66] demonstrates the significance of the foregoing precept.

In *Telstar,* the Supreme Court found that in the BIR's FLD/FAN issued to therein taxpayer, it failed to contain a categorical demand for payment because "... [therein taxpayer] **may pay the above assessment through the Electronic Filing and Payment Section (EFPS)**. Afterwards, **submit proof of payment thereof to the Regular Large Taxpayers Audit Division 1 located at Rm 216, National Office Building, Diliman, Quezon City** for updating of [therein taxpayer's] records."[67]

---

65 G.R. No. 252944, November 27, 2024. Boldfacing ours.
66 G.R. Nos. 249239 and 250286, February 10, 2025.
67 *Ibid.* Boldfacing in the original; words in brackets ours.

Here, RD Rosario's FLD/FAN [68] dated January 14, 2020, assessed petitioner for deficiency IT, VAT, EWT, and WTC covering TY 2016. However, the BIR said in the FLD/FAN that "[petitioner is] requested to pay [its] aforementioned deficiency tax liabilities through the duly authorized agent bank in which [it is] enrolled using the **electronic BIR Payment Form (eBIR Form 0605)** within the time as shown in the enclosed assessment notice. ..."[69] Black defines the verb "request" as "[t]o ask for something or for permission or authority to do, see, gear, etc., something; to solicit; and is synonymous with beg, entreat, and beseech."[70]

Simply put, the BIR is asking permission from petitioner to pay its 2016 assessed deficiency internal revenue taxes found in the FLD/FAN, thereby negating the presence of a categorical demand for payment enjoined by *Telstar*. For this reason, RD Rosario's FLD/FAN is void, effectively warranting its cancellation and withdrawal.

Finally. True, RD Rosario's **FDDA** is void, for being invalidly served upon petitioner, violative of its right to due process. Equally true is that the WOGs are likewise null, because they enforce RD Rosario's void **FDDA**. Likewise apt is the tenet in *Commissioner of Internal Revenue v. Liquigaz Corporation (Liquigaz)*,[71] holding that the FDDA and FLD/FAN are BIR notices, separate and distinct from one another; thus, the nullity of the FDDA does *not* equate to the nullity of the FLD/FAN, save when the law or regulations provide:

> The CIR and [the taxpayer] are at odds with regards to the effect of a void FDDA. [The taxpayer] harps that a void FDDA will lead to a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer, which may then be appealed before the CTA. On the other hand, the CIR believes that a void FDDA does not *ipso facto* result in the nullification of the assessment.
>
> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an 'assessment' from a 'decision.' In *St. Stephen's Association v. Collector of Internal Revenue*, the Court has long recognized that a 'decision' differs from an 'assessment,' to wit:

---

68 *Supra* note 9.

69 Page 2, FLD dated January 14, 2020. Exhibit "P-7." Docket, p. 68. Words in brackets and underscoring ours.

70 Black's Law Dictionary Revised Fourth Edition, p. 1468. Underscoring ours.

71 G.R. Nos. 215534 and 215557, April 18, 2016. Emphases ours.

> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review '*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment* . . .'

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other—unless the law or regulations otherwise provide.

. . .

The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains**

> **valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.**
>
> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. **Therefore, it is as if there was no decision rendered by the CIR.** It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. **The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.**

Yet, even by the yardstick forged by *Liquigaz*, petitioner should still be excused from paying the BIR's 2016 deficiency internal revenue tax assessments, because the root of its 2016 tax liabilities, *i.e.*, RD Rosario's FLD/FAN, is void for failure to contain a categorical demand for payment.

WHEREFORE, the Petition for Review dated February 9, 2022, filed by ESS Manufacturing Company, Inc., in CTA Case No. 10763, is **GRANTED**. Accordingly, We **RESOLVE** to:

a. **CANCEL** the Final Decision on Disputed Assessment FDDA-095-RR8A-RDO50-2016-eLA201500084254-A.N. 306 dated June 4, 2021, issued by Regional Director Maridur V. Rosario, finding due from petitioner, deficiency IT, EWT and WTC in the total amount of ₱37,756,661.02, for Taxable Year 2016;

b. **NULLIFY** the Bureau of Internal Revenue's Warrants of Garnishment dated January 3, 2022, implementing the collection of the deficiency internal revenue taxes per Final Decision on Disputed Assessment FDDA-095-RR8A-RDO50-2016-eLA201500084254-A.N. 306 dated June 4, 2021, issued by Regional Director Maridur V. Rosario;

c. **CANCEL** the Formal Letter of Demand with Details of Discrepancies, and Final Assessment Notices dated January 14, 2020, issued by Regional Director Maridur V. Rosario, for failure to contain a categorical demand for payment; and

d. **FORBID** the Commissioner of Internal Revenue, his agents, or other persons acting on his behalf, from collecting on petitioner, the deficiency internal revenue tax liabilities for Taxable Year 2016.

SO ORDERED.

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

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

HP
(with due respect, with Separate Concurring Opinion)
HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ESS MANUFACTURING COMPANY, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10763

Members:

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

Promulgated:

4:28 pm

x - x

SEPARATE CONCURRING OPINION

ANGELES, *J.*:

I agree with the Decision which grants the Petition for Review dated February 9, 2022, cancelling the Final Decision on Disputed Assessment (FDDA) dated June 4, 2021 and nullifying the Warrants of Garnishment (WOGs) dated January 3, 2022.

However, with due respect to the *ponente,* I would like to discuss further my position on the issue of whether petitioner is liable for deficiency internal revenue tax per the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) dated January 14, 2020.

In the Decision, the *ponente,* citing Section 6(A) of the National Internal Revenue Code (Tax Code) and jurisprudence, held that one of the preconditions for the validity and efficacy of the FLD/FAN is that it must contain a categorical demand for payment. Then, on the basis of *Commissioner of Internal Revenue v. Telstar Manufacturing Corp.,*[1] the *ponente* ruled that the FLD/FAN subject of this case is void due to respondent's use of the phrase "requested to pay" which was taken to mean that the BIR was asking permission from petitioner to pay its 2016 assessment, instead of categorically demanding the same.

[1] G.R. Nos. 249239, 250286 & 249241-42, February 10, 2025.

On this point, I respectfully disagree.

The mere use by respondent of the word "requested" instead of "demanded" with respect to the payment of the assessed deficiency taxes in the FLD/FAN, does not, on its own, justify the complete nullification of the FLD/FAN. A deviation from the usual wording or phrasing used in a FLD/FAN is not prohibited under any relevant rule, provided that the FLD/FAN contains a definite and actual demand to pay.

In this case, scrutiny of the FLD/FAN dated January 14, 2020[2] reveals that the same contained a complete, definite and actual demand to pay. The pertinent portion of the FLD/FAN reads:

> In view thereof, **you are requested to pay your aforementioned deficiency tax liabilities through the duly authorized agent bank in which you are enroled using the eleetronic BIR Payment Form (eBIR Form 0605) within the time as shown in the enclosed assessment notice.** Afterwards. submit copy thereof to the Assessment Division, this Region, located at 3rd Floor, BIR Building, Sen. Gil Puyat Avenue, Makati City for updating of your records and cancellation of the herein FLD / FAN, if warranted. *(Emphasis supplied)*

Aside from the use of the word "requested," the above-cited paragraph found in the FLD, coupled with the demand to pay found in the attached Details of Discrepancies[3] and Assessment Notices,[4] are sufficient to constitute a definite and actual demand to pay. Thus, based on the FLD/FAN read in its entirety, it cannot be denied that the same adequately notified petitioner that the amount therein stated is due as tax and of a demand for payment thereof.

Meanwhile, in the *Telstar* case,[5] the Supreme Court held that the FLD/FAN subject therein had no demand for payment, to wit:

> In the case at bench, a plain reading of the Formal Letter of Demand/Final Assessment Notice readily reveals that no demand for payment of the assessed taxes was made:
>
> > Pursuant to the provision of **Section 228** of the aforesaid Code and its Implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof. However, if you are amenable, **you may pay the above assessment through the Electronic Filing and Payment Section (EFPS)**. Afterwards, **submit proof of payment thereof to the Regular Large Taxpayers Audit Division 1 located at Rm 216, National Office Building, Diliman, Quezon City** for updating of your records.

---

[2] Exhibit "P-7, Docket, pp. 67-68.
[3] *Id.*, pp. 69-71.
[4] *Id.*, pp. 72-75.
[5] *Supra*, note 1.

u

> If we fail to hear from you within the said period, you shall be considered in default, in which case, a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid deficiency taxes, inclusive of civil penalty and interest. (Emphasis in the original)
>
> To recapitulate, the Formal Letter of Demand/Final Assessment Notice must contain a categorical demand for payment of assessed tax with factual and legal bases. This is because an obligation to pay the tax is being imposed upon the taxpayer. Such obligation must be stated in a clear and plain language to properly apprise the taxpayer. Moreover, based on the document title itself, the Formal Letter of Demand/Final Assessment Notice is a demand for payment of taxes. Perceptibly, it must contain a demand for payment of assessed taxes. Absent such demand, it is rendered defective.

Evident from the FLD/FAN subject of the *Telstar* case that the same did not firmly demand from petitioner the assessed taxes, not only because it used the phrase "you may pay," but also because petitioner was informed that "a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid deficiency taxes." Such statements, when read in its entirety, negate a clear demand for payment. Such is not the case here.

Consequently, it is my humble opinion that the FLD/FAN subject of this case remains valid.

Notwithstanding the foregoing, I still vote to **grant** the instant Petition for Review because records show that petitioner timely filed its administrative protest[6] and supplementary letter and documents,[7] and respondent failed to act thereon (considering that the FDDA dated June 4, 2021 was correctly found by the *ponente* as invalid for being violative of petitioner's right to due process.)

There being no valid action on petitioner's protest to the FLD/FAN, the same remained pending. Therefore, the WOGs dated January 3, 2022 all emanated from a non-demandable assessment. As such, all are void without force and effect in accordance with the ruling in *Light Rail Transit Authority v. Bureau of Internal Revenue.*[8]

HENRY S. ANGELES
Associate Justice

---

[6] Exhibit "P-8, Docket, pp. 76-87.
[7] Exhibit "P-9, Docket, pp. 91-105.
[8] G.R. No. 231238, June 20, 2022.