CTA Form No. 8

21-000134-0053

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10490

MASTER SPORTS CORPORATION,

Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

To:

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

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. RAUL SJ. DE GUZMAN
Bureau of Internal Revenue-Revenue Region No. 8A
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Ave., cor. Chino Roces Ave., Makati City

TIONGCO SIAO BELO & ASSOCIATES LAW OFFICES
Units 2104-2105, Robinson's Equitable Tower
4 ADB Avenue, Ortigas Center
1605 Pasig City City

GREETINGS:

You are hereby notified by these presents that on **March 11, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 13, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MASTER SPORTS CORPORATION, Petitioner,	**CTA CASE NO. 10490**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA, CUI-DAVID,** *and JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 11 2025 ; 3:35 PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Master Sports Corporation (**petitioner**), pursuant to Rule 8, Section 3(a)[2] in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of Tax

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1 Filed on 19 March 2021, Division Docket, pp. 7-70, including attached annexes.

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

3 **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[.]

Appeals (**RRCTA**). Petitioner seeks to annul respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Decision (In the Matter of the Request for Reconsideration of the Decision Denying the Protest of Master Sports Corporation and Demanding Payment of the aggregate amount of ₱38,523,211.09 representing income tax [**IT**], value-added tax [**VAT**], expanded withholding tax [**EWT**], withholding tax on compensation [**WTC**] and documentary stamp tax [**DST**] for taxable year [**TY**] 2010)"[4] (**assailed Final Decision**) dated 03 February 2021 which demanded payment for the alleged tax liability arising from the assessments issued against petitioner.

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at BMG Centre Building, Paseo De Magallanes Commercial Center, Makati City.[5]

Respondent, on the other hand, is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, 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**).

FACTS OF THE CASE

On 20 March 2012, respondent issued Letter of Authority (**LOA**) No. LOA-048-2012-00000050/eLA201000077695[6], authorizing Revenue Officer (**RO**) Magdalena Ventura (**Ventura**) and Group Supervisor (**GS**) Virgina Repito (**Repito**) of Revenue District Office (**RDO**) No. 048-West Makati, to examine petitioner's books of accounts for all internal revenue taxes for the period of 01 January 2010 to 31 December 2010, or TY 2010. Petitioner's authorized representative, April Ann Corpuz (**Corpuz**), received the LOA on 27 March 2012.

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4 Exhibit "P-6" / "R-17", BIR Records, Folder I, pp. C36-C42.

5 See Paragraph 1, Statement of the Facts & Issues, Pre-Trial Order, Division Docket, p. 264.

6 BIR Records, Folder I, p. 45.

Thereafter, or on 29 October 2013, petitioner, through its authorized representative, Domingo G. Foronda (**Foronda**), executed a Waiver of the Defense of Prescription under the Statute of Limitation of the NIRC (**first waiver**)[7] which extended the period of assessment until 31 August 2014. On even date, then Officer-in-Charge Revenue District Officer Wilfredo V. Pilapil (**OIC RDOr Pilapil**) accepted the waiver. Petitioner received the copy of the signed waiver on 31 October 2013.[8]

Subsequently, or on 21 March 2014, petitioner (through Foronda) executed a **second waiver** that extended the period of assessment until 31 December 2014.[9] OIC RDOr Pilapil also accepted the latter waiver on 25 March 2014. Petitioner again received a copy of the signed waiver on 31 March 2014.[10]

On 27 June 2014, petitioner (through Foronda) executed a **third waiver** that extended the period of assessment until 31 March 2015.[11] OIC RDOr Pilapil accepted the third waiver on 18 July 2014. Petitioner received a signed copy of the said waiver on 22 July 2014.[12]

On 14 November 2014, a **fourth waiver** was issued which extended the period of assessment until 30 June 2015.[13] OIC RDOr Pilapil accepted the last waiver on 20 November 2014. Petitioner received a copy of the signed waiver on 04 December 2014.[14]

On 31 March 2015, petitioner received the Preliminary Assessment Notice (**PAN**) Part I, dated 30 March 2015[15], with Details of Discrepancies and PAN Part II.[16] The PAN initially assessed petitioner with tax liabilities totaling to ₱36,077,786.84 (inclusive of surcharges, interests and compromise penalty). The records do not yield that petitioner filed a reply thereto.

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7 Id., p. 228.
8 See written marks on the right portion of the waiver, id.
9 Id., p. 229.
10 See written marks on the right portion of the waiver, id.
11 Id., p. 230.
12 See written marks on the right portion of the waiver, id.
13 Id., p. 230A.
14 See written marks on the right portion of the waiver, id.
15 Exhibit "P-1", id., pp. 316-321.
16 Id., p. 315.

On 21 April 2015, respondent issued the Formal Assessment Notice (**FAN**) Parts I[17] and II[18], with attached Assessment Notices[19] (**ANs**) and Details of Discrepancies.[20] There, respondent found petitioner liable for deficiency IT, VAT, WTC, EWT, DST and compromise penalties in the total amount of ₱36,535,220.90. The ANs indicated that petitioner should pay the said liabilities on or before 21 May 2015. Petitioner received the said notices on 22 April 2015.

On 21 May 2015, petitioner filed a Protest[21] to the FAN Part I, (**Protest**) with Revenue Region No. 8 and requested for a reinvestigation to clarify the basis of the alleged tax deficiencies. It also sought additional time to submit the documents in support of its Protest. Simultaneously, petitioner submitted a payment form and proof of payment for the compromise penalty of ₱16,000.00 as assessed in the FAN Part II.[22]

In response thereto, in a letter dated 22 June 2015[23], respondent informed petitioner that the entire docket of its case will be transferred to RDO No. 048-West Makati for evaluation and action. *Per* Memorandum dated 24 June 2015[24], RO Grecita N. Silva (**Silva**) and GS Arthur Benjamin T. Padilla (**Padilla**) were assigned to conduct the reinvestigation.

Later, or on 03 July 2015, petitioner was granted sixty (60) days from the date of filing the Protest, to submit the documentary evidence in support of its contention and arguments.[25] In compliance thereto, on 20 July 2015, petitioner made a transmittal of its supporting documents.[26]

Allegedly, on 03 December 2015[27], petitioner received the Final Decision on Disputed Assessment (**FDDA**) dated 04 November 2015[28]

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17 Exhibit "P-2" / "R-7", id., pp. 337-341.
18 Exhibit "R-8", id., p. 335.
19 Exhibits "R-1" to "R-6", id., pp. 342-347.
20 Exhibit "R-7-A", id., pp. 336-339.
21 Dated 20 May 2015, Exhibit "P-3" / "R-9", id., pp. 356-360.
22 See Letter dated 21 May 2015 (including attached annexes), id., pp. 348-354.
23 Exhibit "R-10", id., p. 363.
24 Id., p. 367.
25 Exhibit "R-11", id., p. 368.
26 See Letter date 20 July 2015, id., p. 661.
27 See first paragraph of Exhibit "P-5" / "R-13", id., Folder II, p. 1044.
28 Exhibit "P-4" / "R-12", id., Folder I, pp. 671-673.

with Details of Discrepancies[29], signed by Regional Director Jonas DP Amora (**RD Amora**). There, it was stated that *per* RO Silva's report, it failed to submit the required documents (in support of the Protest) despite several notices to it. The FDDA also stated that respondent found petitioner to be liable for deficiency taxes of ₱35,892,651.73 for TY 2010, and gave it thirty (30) days from receipt thereof to appeal either before the CIR or the Court of Tax Appeals (**CTA**). Otherwise, the assessments shall become final and executory.

On 29 December 2015, petitioner filed an Affidavit and Motion for Reconsideration[30] (**first MR**) before the Office of the CIR, stating that it submitted the supporting documents within the period allowed. It added that it was the assigned RO who failed to consider the documents and the arguments in the subject assessments.

After referring the case docket to the Chief Legal Division of Revenue Region No. 8[31], RO Catherine C. Fuentes (**Fuentes**) and GS Fidel P. Calvan (**Calvan**) were assigned to conduct further investigation of petitioner's first MR.[32] In the course of such evaluation, respondent noted that petitioner did not contest the assessments for WTC, DST and VAT. As a result, petitioner was required to pay the said undisputed tax liabilities.[33] However, despite notice and demand, petitioner failed to pay. Thus, RO Fuentes and GS Calvan recommended the denial of petitioner's first MR and the collection of the deficiency taxes.[34]

Consequently, on 02 May 2017, respondent issued a Preliminary Collection Letter[35] (**PCL**) demanding petitioner to pay ₱38,523,211.09. The PCL was served *via* registered mail on 03 May 2017[36] at petitioner's four (4) addresses, namely: (1) 2nd 5th floors BMG Centre San Antonio St. Paseo de Magallanes NCR, Fourth District, Makati City; (2) G/F West Tower Condominium, 1815, South Superhighway Bangkal, Makati City; (3) 1101 (EM) SM Mall of Asia, Bay City, Brgy. 76 Pasay City; and (4) Galleria Corporate Center, EDSA Avenue, Quezon City. Despite

29 Exhibit "R-12-A", id., pp. 666-669.
30 Exhibit "P-5" / "R-13", id., Folder II, pp. 1041-1044.
31 See Letter dated 10 March 2016, Exhibit "R-15", id., Folder I, p. 680.
32 See Memorandum dated 31 March 2016, id., p. 685.
33 See Letter dated 18 April 2016, Exhibit "R-16", id., p. 686.
34 See Memorandum dated 28 July 2016, id., p. 692.
35 Exhibits "R-18" to "R-21", id., pp. 709-712.
36 See Registry Receipts attached in the lower left portion of the Preliminary Collection Letter, Exhibits "R-18-B", "R-19-B", "R-20-B", and "R-21-B", id.

petitioner's request for an extension of time to prepare documents (relevant to the PCL)[37], respondent issued a Final Notice Before Seizure[38] (**FNBS**) on 23 May 2017. The FNBS was also sent *via* registered mail to petitioner's four (4) addresses.[39]

In response to the said notices, petitioner proposed to only pay the DST liability considering the financial challenges it was going through.[40] Nevertheless, on 19 June 2017 and 07 July 2017, respectively, petitioner was also able to pay the DST and WTC as evidenced by the relevant Payment Forms[41] and the BTR-BIR Deposit Slips.[42]

On 17 August 2017, petitioner wrote the BIR informing it that it indeed failed to timely act on the latter's notices since most of them were sent to its Paseo De Magallanes office. Allegedly, it was not informed of these notices and they were hidden from the management. In the letter, it also intimated that it intended to settle the basic VAT deficiency but due to its continuing financial challenges, it could not settle the IT deficiency.[43]

On 29 August 2017, petitioner again filed a Request for Reconsideration (**second MR**) and urged respondent to revert to the findings of OIC RDOr Pilapil, and remove the assessments for IT and EWT.[44] Thereafter, on 07 September 2017, petitioner paid the VAT deficiency in the amount of ₱325,791.70.[45] On 13 December 2019, petitioner again filed a letter (dated 12 December 2019) requesting for reconsideration for the IT and EWT deficiency assessments[46] (**third MR**).

On 03 February 2021, in response to petitioner's second and third MRs, respondent issued the assailed Final Decision.[47] There, respondent averred that petitioner failed to timely submit both evidence (in support

37 See Letter dated 16 May 2017, Exhibit "R-22", id., p. 713.
38 Exhibit "R-23" to "R-26", id., pp. 714-717.
39 See Registry Receipts, Exhibits "R-23-B", "R-24-B", "R-25-B" and "R-26-B", id.
40 See Exhibit "R-27", id., p. 720.
41 Id., pp. 721 and 726.
42 Id., pp. 722 and 727.
43 See Letter dated 17 August 2017, id., pp. 731-732.
44 Exhibit "R-29", id., pp. 733-734.
45 See Payment Form and BTR-BIR Deposit slip, id., pp. 735-736.
46 Exhibit "R-30", id., pp. 800-802.
47 Supra at note 4.

of its Protest) and the first MR to the FDDA. Hence, petitioner was found liable to pay the aggregate amount of ₱38,523,211.09, excluding its payments for DST, WTC and VAT. Based on the letter dated 02 June 2021, petitioner received the assailed Final Decision on 17 February 2021.[48]

PROCEEDINGS BEFORE THE COURT

Aggrieved, on 19 March 2021, petitioner filed before this Court the instant Petition for Review.[49] The case was initially raffled to the Second Division[50] and was docketed as CTA Case No. 10490. After the Court granted additional time to file an Answer[51], respondent filed the same on 16 July 2021.[52] On the same date, respondent also submitted to the Court a Compliance along with the BIR Records.[53]

In the Answer, respondent interposed that while there is a five (5)-year period to collect the deficiency taxes for TY 2010, the period may be suspended should there be a request for reinvestigation which the CIR granted. In petitioner's case, when it filed the Protest to the FAN and the first MR (on 21 May 2015 and 29 December 2015, respectively), the CIR duly acted on them, hence the statute of limitations was effectively suspended for the relevant period.

In the same Answer, respondent also alleged that petitioner should be deemed estopped from invoking prescription after it repeatedly pleaded for leniency and extension of time to settle the obligations. Further, it voluntarily paid the deficiency taxes of DST, WTC and VAT. Thus, from petitioner's actions, it had admitted the validity of the assessments made against it.

48 BIR Records, Folder 1, p. C66.
49 Supra at note 1.
50 The Second Division was then composed of Associate Justice Juanito C. Castañeda, Jr. as chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as members.
51 See Motion for Extension of Time to File Answer, Division Docket, pp. 74-77; and Order dated 01 July 2021, id., p. 80.
52 Id., pp. 83-99.
53 Id., pp. 81-82.

Thereafter, the Pre-Trial Conference was set on 29 November 2021.[54] Both parties filed their respective pre-trial briefs.[55]

The Pre-Trial Conference eventually proceeded on 21 February 2022 where the case was also referred to the Philippine Mediation Center-CTA (**PMC-CTA**) for the possibility of an amicable settlement.[56] Despite efforts to conciliate[57], the parties ultimately failed to reach any settlement or compromise.[58]

On 20 October 2022, the Pre-Trial Conference proceeded where the parties were ordered to file their Joint Stipulation of Facts and Issues (**JSFI**) within 30 days from notice thereof.[59] However, the parties failed to file their JSFI.[60] The Court issued the Pre-Trial Order[61] on 17 January 2023.

In the trial that ensued subsequently, petitioner presented its lone witness, Crisostomo Consul (**Consul**) to the witness stand, where he testified that: (1) he is petitioner's Finance and Administrative Manager; (2) when the company received the FAN on 22 April 2015, it filed a Protest thereto (on 20 May 2015) to contest the assessments and to request for reinvestigation; (3) respondent granted petitioner a period of 60 days to submit the supporting documents; (4) despite submitting the documents, respondent issued the FDDA; (5) petitioner filed the first MR to the FDDA; and (6) respondent issued the assailed Final Decision.[62]

On cross-examination, Consul stated that one of petitioner's employees received the FDDA. Also, the first MR filed on 29 December 2015 was signed by petitioner's Treasury Manager, Maricar Santos. No further examinations followed.[63]

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54 See Notice of Pre-Trial Conference dated 28 July 2021, id., pp. 201-202; Notice of Resetting dated 15 October 2021, id., p. 204.
55 See Respondent's Pre-Trial Brief, id., pp. 184-198; Petitioner's Pre-Trial Brief, id., pp. 205-211.
56 See Order dated 21 February 2022, id., p. 221.
57 See Reporting of Mediation Schedule dated 11 May 2022, id., p. 229 and Resolution dated 19 July 2022, id., p. 235
58 See Mediator's Report dated 07 October 2022, id., p. 246.
59 Order dated 20 October 2022, id., pp. 257-258.
60 See Records Verification dated 05 December 2022, id., p. 260.
61 Id., pp. 264-273.
62 See Judicial Affidavit of Crisostomo Consul, Exhibit "P-7", id., pp. 289-296.
63 TSN dated 11 May 2023, pp. 6-7.

On 26 May 2023, petitioner filed its Manifestation and Formal Offer of Evidence[64] (**FOE**) consisting of Exhibits "**P-1**" to "**P-7**"[65], inclusive of sub-markings. Respondent filed his or her Comment to the FOE on 09 June 2023.[66] Pending the FOE's resolution, on 29 May 2023, the case was transferred to the First Division pursuant to Administrative Circular No. 01-2023 which reorganized the Court's Divisions.[67] In the Resolution dated 08 August 2023[68], the First Division admitted all of petitioner's exhibits.

Thereafter, respondent presented his or her two (2) witnesses, RO Fuentes and RO Lady Ivy R. Tatang (**Tatang**).

When RO Fuentes took the witness stand, she recounted the events that transpired during the assessment, *i.e.*, the issuance of the PAN, FAN, FDDA, and the receipt of petitioner's Protest to the FAN and the first MR (to the FDDA). Moreover, she declared that she recommended the denial of the first MR after petitioner failed to comply with the BIR's request to submit the necessary documents for the subject assessments.[69]

On cross-examination, RO Fuentes confirmed that she was not privy to the execution of the waivers between petitioner and respondent. No redirect examination was conducted.[70]

RO Tatang assumed the witness stand next where she testified: (1) on the issuances and service of the PCLs and FNBSs to petitioner; (2) the receipt of the corresponding letters (second and third MRs) that

64 Division Docket, pp. 352-356.

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Exhibits	Description
"P-1"	Preliminary Assessment Notice dated 30 March 2015.
"P-2"	Formal Assessment Notice dated 21 April 2015.
"P-3"	Protest dated 20 May 2015.
"P-4"	Final Decision on Disputed Assessment dated 4 November 2015.
"P-5"	Motion for Reconsideration dated 17 December 2015.
"P-6"	Decision dated 3 February 2021.
"P-7 to P-7-A"	Judicial Affidavit of Mr. Crisostomo Consul; signature of Mr. Consul.

66 See Comment (To Petitioner's Manifestation and Formal Offer of Evidence dated May 26, 2023), Division Docket, pp. 417-418.

67 See Minute Resolution dated 29 May 2023, id., p. 421.

68 Id., pp. 431-432.

69 See Judicial Affidavit of Catherine C. Fuentes, Exhibit "R-32", id., pp. 159-169.

70 TSN dated 10 October 2023, pp. 10-11.

petitioner filed in response to the PCLs and FNBSs; (3) the partial payments which petitioner made; and (4) and the issuance of the assailed Final Decision.[71] On cross-examination, RO Tatang clarified that petitioner received the PCLs. However, as for petitioner's signatory in the letters, she stated that she was not aware if the said person is a key officer in the company. No redirect examination was conducted.[72]

Later, or on 25 October 2023, respondent filed the FOE[73] where he or she offered Exhibits "**R-1**" to "**R-33**"[74], inclusive of sub-markings.

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71 See Judicial Affidavit of Lady Ivy R. Tatang, Exhibit "R-33", Division Docket, pp. 170-179.

72 TSN dated 10 October 2023, pp. 15-18.

73 Division Docket, pp. 435-447.

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Exhibits	Description
"R-1"	Assessment Notice No. IT-ELA77695-10-15-519 dated April 21, 2015
"R-1-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-1-B"	Name and Signature of the Taxpayer
"R-2"	Assessment Notice No. VT-ELA77695-10-15-519 dated April 21, 2015
"R-2-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-2-B"	Name and Signature of the Taxpayer
"R-3"	Assessment Notice No. WE-ELA77695-10-15-519 dated April 21, 2015
"R-3-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-3-B"	Name and Signature of the Taxpayer
"R-4"	Assessment Notice No. WC-ELA77695-10-15-519 dated April 21, 2015
"R-4-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-4-B"	Name and Signature of the Taxpayer
"R-5"	Assessment Notice No. DS-ELA77695-10-15-519 dated April 21, 2015
"R-5-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-5-B"	Name and Signature of the Taxpayer
"R-6"	Assessment Notice No. MC-ELA77695-10-15-519 dated April 21, 2015
"R-6-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-6-B"	Name and Signature of the Taxpayer
"R-7"	Formal Assessment Notice Part I dated April 21, 2015
"R-7-A"	Details of Discrepancies dated April 21, 2015
"R-7-B"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-7-C"	Name and Signature of the Taxpayer
"R-8"	Formal Assessment Notice Part II dated April 21, 2015
"R-8-A"	Signature of Jonas JP. Amora – Regional Director – Makati
"R-9"	Protest Letter of the Taxpayer
"R-10"	Reply to Protest Letter dated June 22, 2015
"R-10-A"	Name and Signature of Jonas DP Amora, Regional Director
"R-11"	Reply to Protest Letter by OIC RDO Laura Salita dated July 3, 2015
"R-11-A"	Name and Signature of RDO Laura Salita
"R-12"	Final Decision on Disputed Assessment dated November 04, 2015
"R-12-A"	Details of Discrepancies dated November 4, 2015
"R-12-B"	Name and Signature of Jonas DP Amora, Regional Director
"R-12-C"	Signature of the Taxpayer
"R-13"	Motion for Reconsideration of the FDDA
"R-14"	Petitioner's Affidavit and Motion for Reconsideration asking its case be remanded to RDO 048-West Makati for continuation of the reinvestigation.

"R-15"	Letter to Taxpayer dated March 10, 2016
R"-15-A"	Name and Signature of Teresita M. Dizon, Assistant Regional Director – Officer in Charge
"R-16"	Reply to Motion for Reconsideration dated April 18, 2016
"R-16-A"	Name and Signature of Wilfredo V. Pilapil, RDO
"R-17"	Decision of the CIR dated February 3, 2021
"R-17-A"	Name and Signature of CIR Caesar R. Dulay
"R-18"	Preliminary Collection Letter dated May 2, 2017 – mailed at 2nd 5th floors BMG Centre, San Antonio St. Paseo De Magallanes, Makati
"R-18-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-18-B"	Registry Receipt of Mailing
"R-19"	Preliminary Collection Letter dated May 2, 2017 – mailed at G/F West Tower Condominium, 1815 South Superhighway Bangkal, Makati City
"R-19-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-19-B"	Registry Receipt of Mailing
"R-20"	Preliminary Collection Letter dated May 2, 2017 – mailed at 1101 (EM) SM Mall of Asia, Bay City, Brgy. 76, Pasay City
"R-20-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-20-B"	Registry Receipt of Mailing
"R-21"	Preliminary Collection Letter dated May 2, 2017 – mailed at Galleria Corporate Center, Edsa Avenue, Quezon City
"R-21-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-21-B"	Registry Receipt of Mailing
"R-22"	Letter of Taxpayer dated May 16, 2017 in response to PCL
"R-23"	Final Notice Before Closure mailed at 2nd 5th floors BMG Centre, San Antonio St. Paseo De Magallanes, Makati City
"R-23-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-23-B"	Registry Receipt of Mailing
"R-24"	Final Notice Before Closure mailed at 1101 (EM) SM Mall of Asia, Bay City Brgy. 76, Pasay City
"R-24-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-24-B"	Registry Receipt of Mailing
"R-25"	Final Notice Before Closure mailed at Galleria Corporate Center, Edsa Avenue, Quezon City
"R-25-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-25-B"	Registry Receipt of Mailing
"R-26"	Final Notice Before Closure mailed at G/F West Tower Condominium, 1815 South Superhighway Bangkal, Makati City
"R-26-A"	Name and Signature of Luisa M. Labad, OIC-Asst. Chief, Collection Division
"R-26-B"	Registry Receipt of Mailing
"R-27"	Letter of Taxpayer dated June 15, 2017 in response to Final Collection Letter dated May 23, 2017
"R-28"	Letter of Taxpayer dated August 17, 2017, re: Payment Proposal
"R-29"	Letter of Taxpayer dated August 29, 2017 re: Request for Reconsideration
"R-30"	Letter of Taxpayer dated December 12, 2019 re: Request for Reconsideration or Reinvestigation addressed to RR8, Legal Division – Atty. Philip A. Mayo
"R-31"	Memorandum of Assignment dated April 21, 2015
"R-31-A"	Name and Signature of Rosita Item
"R-32"	Judicial Affidavit of Catherine C. Fuentes
"R-32-A"	Name and Signature of Catherine C. Fuentes
"R-33"	Judicial Affidavit of Lady Ivy R. Tatang
"R-33-A"	Name and Signature of Lady Ivy R. Tatang

After petitioner filed its Comment[75] thereto, the Court admitted all of respondent's exhibits.[76]

In compliance with the Order of 10 October 2023[77], respondent filed his or her Memorandum[78] on 19 February 2024 while petitioner filed its Memorandum[79] on 26 February 2024. Consequently, the case was submitted for decision.[80]

ISSUES

Based on the Pre-Trial Order[81], the issue for this Court's resolution is —

> WHETHER PETITIONER MASTER SPORTS CORPORATION IS LIABLE TO PAY THE ALLEGED DEFICIENCY TAXES AMOUNTING TO ₱38,523,211.09, CONSISTING OF INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), WITHHOLDING TAX ON COMPENSATION (WTC) AND DOCUMENTARY STAMP TAX (DST) ASSESSED FOR THE TAXABLE YEAR (TY) 2010.

ARGUMENTS

In support of the instant petition, petitioner maintains that respondent's right to collect the alleged deficiency taxes has already prescribed. Citing Section 203[82] of the NIRC of 1997, as amended, and *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*[83] (**CIR v. CTA**), petitioner emphasizes that for assessments issued within the ordinary prescriptive period of three (3) years, BIR has another three (3) years within which to collect the said taxes through distraint, levy or court proceeding. Here, petitioner claims that since the subject assessments were issued

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[75] See Comment (to Respondent's Formal Offer of Evidence dated 25 October 2023), Division Docket, pp. 450-452.
[76] See Resolution dated 16 January 2024, id., pp. 466-467.
[77] Id., pp. 434-434-A.
[78] See Memorandum for Respondent, id., pp. 468-483.
[79] See Memorandum (for Petitioner Master Sports Corporation), id., pp. 486-518.
[80] See Minute Resolution dated 12 March 2024, id., p. 523.
[81] See Stipulation of Facts, Pre-Trial Order, supra at note 61.
[82] **SEC. 203**. *Period of Limitation Upon Assessment and Collection.*
[83] G.R. No. 258947, 29 March 2022.

within the three (3)-year prescriptive period, particularly on 21 April 2015, respondent only had until 21 April 2018 to collect its supposed deficiency tax liabilities. However, he or she failed to do so.

Assuming that the counting of the prescriptive period to collect is to be reckoned from the finality of the assessments, petitioner asserts that respondent is still barred from making the collection thereof. According to it, the subject assessments became final and executory on 05 December 2015, or 30 days after it received the FDDA on 05 November 2015.[84] Counting three (3) years from the said finality, respondent had until 05 December 2018 to pursue collection of the deficiency taxes. However, respondent failed to initiate any distraint, levy or court action against petitioner.

Moreover, petitioner insists that the extraordinary period of ten (10) years to assess (under Section 222[85] of the NIRC of 1997, as amended) is inapplicable in this case as respondent did not allege the filing of false or fraudulent returns in the issued PAN, FAN, and FDDA. Hence, absent any allegation and proof of fraud, it follows that the extraordinary period of five (5) years to collect also does not apply.

With regard to the subject assessments, petitioner submits that these were issued in violation of its right to due process and rendered void the assessments against it. Quoting *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[86], it argues that due process requires the BIR to consider the defense and evidence it submitted and to render a decision based thereon. Aside from ignoring its arguments and evidence when the FDDA was issued, respondent also issued the FAN without mentioning if it filed any reply to the PAN. As it is, the FAN had become a complete reiteration of the PAN.

Respondent, on the other hand, prays for the dismissal of the case for lack of cause of action. He or she maintains that the subject assessments have become final and executory after petitioner failed to timely appeal the FDDA issued on 04 November 2015. Respondent contends further that petitioner never denied that it belatedly filed its first MR on 29 December 2015. Put differently, petitioner has admitted

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[84] See Par. 45, Memorandum (for Petitioner Master Sports Corporation), Division Docket, p. 503.
[85] **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
[86] G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

the same, thus no further proof is required. Respondent also contends that a judicial admission like petitioner's is conclusive to the party making it.

On the supposed prescription of the collection, respondent avers that the right to collect has not yet prescribed as he or she is allowed a period of five (5) years under Section 222(c)[87] of the NIRC of 1997, as amended, regardless of if the assessment period is three (3) years or ten (10) years. Applying the five (5)-year period from the service of the FDDA on 05 November 2015, respondent had until 05 November 2020 to collect the taxes. However, on 27 March 2020, BIR issued Revenue Regulations (**RR**) No. 7-2020[88] and Revenue Memorandum Circular (**RMC**) No. 34-2020[89] which mandated the exclusion of 137 days (or the period of suspension during the COVID-19 pandemic) in the counting of the prescriptive period to collect. Thus, adding 137 days to 05 November 2020, respondent had until 22 March 2021 to initiate distraint, levy or court action. On 19 March 2021, petitioner filed the instant Petition for Review. Accordingly, with the said judicial action, the period of collection was suspended.

Respondent further declares that the period to collect the deficiency taxes was also effectively suspended when petitioner filed its Protest to the FAN (through a request for reinvestigation) and its first MR to the FDDA, and both requests were duly granted and assigned to ROs for further evaluation.

Finally, respondent criticizes petitioner's conflicted stance when it insisted that the collection of the 2010 deficiency tax liability could no longer be pursued or has prescribed even after petitioner itself repeatedly requested for deferments (to collect). Similarly, after pleading for additional time to settle its obligation, petitioner had already voluntarily paid partially the deficiency taxes.

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87 **SEC. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

...

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

88 Implementing Section 4 [z] of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act," Particularly on the Extension of Statutory Deadlines and Timelines for the Filing and Submission of Any Document and the Payment of Taxes.

89 Suspending the Running of the Statute of Limitations in the Assessment and Collection of Taxes Pursuant to Section 223 of the National Internal Revenue Code of 1997, as Amended, Due to the Declaration of a National Emergency from the Corona Virus Disease 2019 (COVID-19) Situation.

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the case, it deems propitious to first determine the timeliness of petitioner's judicial appeal as this is determinative of this Court's valid exercise of jurisdiction.

THE COURT HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

It bears stressing that the CTA, being a special court, can take cognizance only of matters that are clearly within its jurisdiction. In relation to this, Section 7 of Republic Act (**RA**) No. 1125, as amended by RA 9282[90], specifically provides:

> ...
>
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**[.][91]
>
> ...

The above provision is implemented by Section 3(a)(1), Rule 4 of the RRCTA which states:

> ...
>
> SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

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[90] 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.

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

(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**[.][92]

...

Based on the foregoing provisions, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds.[93]

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[94], the Supreme Court had the occasion to rule that as long as a party is adversely affected by a decision or ruling of the CIR, the former may file an appeal before the CTA within 30 days from the receipt of the said ruling or decision –

> ...
>
> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, **for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.**
>
> ...

In the same case, the Supreme Court clarified the CTA's exercise of its appellate jurisdiction on the issue of prescription of the BIR's right to collect taxes. There, the Supreme Court explained –

92 Emphasis supplied and italics in the original text.
93 *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, supra at note 83.
94 G.R. No. 169225, 17 November 2010; Citation omitted and emphasis supplied.

> ...
>
> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. ...
>
> ...
>
> To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. **This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**[95]
>
> ...

Applying the foregoing, considering petitioner's letter dated 02 June 2021[96] and the allegation in the present petition, it received CIR's assailed Final Decision on <u>17 February 2021</u>.[97] Even with this repeated mention of when it received the assailed Final Decision, respondent did not lift a finger or had not taken an issue on the timeliness of the petition's filing. Thus, counting 30 days from 17 February 2021, petitioner had until 19 March 2021 to appeal the said decision to the CTA. As the Petition for Review was timely filed on 19 March 2021, this Court validly acquired jurisdiction over the case.

THE SUBJECT ASSESSMENTS ARE VALID.

We find the subject assessments in order.

First, petitioner's claim that its right to due process was transgressed is not supported by the records. Instead, what appears is that it failed to file a reply to the PAN. Notably, even in its own Petition for Review and Pre-Trial Brief, petitioner did not claim that it filed any response or reply to the PAN. Thus, respondent could not be faulted for not considering its supposed arguments and evidence when there had been no reply filed in the first place.

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95 Id.; Emphasis supplied.

96 Supra at note 48.

97 See Par. 13, Jurisdictional Requirements, Petition for Review, Division Docket, p. 9.

Second, although the FDDA clearly appears to be a reiteration of the FAN (except for the adjusted interest) the same is not sufficient to nullify the assessments. In *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*[98], the Supreme Court ruled that the invalidity of the FDDA does not necessarily extend to the nullity of the assessment –

> ...
> *A void FDDA does not ipso facto render the assessment void*
>
> ...
>
> 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.
>
> Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. **It, however, does not extend to the nullification of the entire assessment.**
>
> ...

Here, although petitioner had transmitted documents to BIR on 20 July 2015 as compliance to respondent's grant of its prior request for reinvestigation, RO Silva reported that the submitted official receipts (**ORs**) and sales invoices are not part of or related to the proposed IT assessment.[99] With the submissions devoid of bearing, the IT deficiency assessment (as well as the other tax liabilities) were thus maintained.

THE SUBJECT ASSESSMENTS BECAME FINAL AND EXECUTORY DUE TO PETITIONER'S FAILURE TO TIMELY APPEAL THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA).

Respondent maintains that the subject assessments are final and executory due to petitioner's failure to file a timely appeal to the FDDA.

98 G.R. Nos. 215534 & 215557, 18 April 2016; Emphasis supplied and italics in the original text.

99 See Memorandum dated 28 July 2015, BIR Records, Folder I, p. 662.

We agree with respondent.

In protesting an assessment, Section 228 of the NIRC of 1997, as amended, states that if the CIR denies, in whole or in part, the protest or administrative appeal, the taxpayer adversely affected by the decision may appeal to the CTA within 30 days from the receipt of the adverse decision:

> ...
>
> **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[.] ...
>
> ...
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. ...
>
> If the **protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[100]
>
> ...

To implement the foregoing remedies afforded by the law, the BIR promulgated RR No. 12-99[101], as amended by RR No. 18-13[102], which provides:

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100 Emphasis supplied and italics in the original text.

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.* —

...

3.1.4. *Disputed Assessment.* — ...

...

If the **protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may** either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

...

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.[103]

...

In applying the foregoing rules, the Supreme Court, in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[104] **(PAGCOR)**, explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

...

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

103 Emphasis supplied and italics in the original text.

104 G.R. No. 208731, 27 January 2016; Citation omitted, italics, underscoring and emphasis in the original and supplied.

1. If the protest is wholly or partially denied by the CIR <u>or</u> his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.

2. **If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.**

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

...

To avoid confusion, the Supreme Court in *PAGCOR* further summarized the rules as follows:

...

To further clarify the three options: **A whole or partial denial by the CIR's authorized representative may be appealed to the CIR** or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.[105]

...

Petitioner claims that it received the FDDA on 03 December 2015. However, the said allegation is not supported by any documentary evidence. On the other hand, the FDDA clearly shows that petitioner's Accounting Assistant, Edward Cuenca, received the same on **05 November 2015.**[106] Moreover, in the Judicial Affidavit of RO Fuentes, it was further averred that the FDDA was served and received at petitioner's registered address in Paseo De Magallanes.[107] Surprisingly, even petitioner's own witness, Consul, testified that petitioner received the FDDA on 04 November 2015. The relevant part states:

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105 Id.; Emphasis supplied.

106 See receiving date, Exhibit "R-12-C", BIR Records, Folder I, p. 673

107 See Question and Answer No. 32, Judicial Affidavit of Catherine G. Fuentes, Exhibit "R-32", Division Docket, p. 164.

...

Q25: After the submission of the documents, what happened?
A25: **The FDDA was received by the Company on 04 November 2015** informing the Petitioner that its Protest was denied and it owes the Respondent the amount of Thirty-Eight Million Five Hundred Twenty-Three Thousand Two Hundred Eleven and 09/100 Pesos (Php 38,523,211.09).[108]

...

Testimonial evidence is susceptible to fabrication and there is very little room for choice between testimonial evidence and documentary evidence.[109] Thus, in the weighing of evidence, documentary evidence prevails over testimonial evidence.[110] Between the two (2) dates, We are inclined to consider and accept respondent's claim (that petitioner received the FDDA on 05 November 2015) considering that it is supported with documentary evidence as opposed to petitioner's bare oral claim.

A scrutiny of the FDDA also reveals that RD Amora issued and signed the same. Thus, petitioner had the option to either appeal the FDDA to the CTA or to the CIR, both within 30 days from the receipt thereof. In this case, petitioner opted to appeal to the CIR. Counting 30 days from 05 November 2015, petitioner had until 05 December 2015 to file an appeal to the CIR. However, as the last day fell on a Saturday, following Section 1[111], Rule 22 of the Rules of Civil Procedure as amended[112], the last day to file is on **<u>07 December 2015</u>**.

Petitioner filed its first MR on **29 December 2015.**[113] Since the administrative appeal was filed beyond the 30-day reglementary period, the subject assessments for TY 2010 had, therefore, become final, executory, and could no longer be the subject of an appeal. Consequently, petitioner could no longer attack or assail the validity thereof.

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108 See Judicial Affidavit of Crisostomo Consul, Exhibit "P-7"; supra at note 62; Emphasis in the original text and supplied.
109 *Socorro P. Cabilao v. Ma. Lorna Q. Tampan, et al.*, G.R. No. 209702, 23 March 2022.
110 Id.
111 Sec. 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.
112 A.M. No. 19-10-20-SC.
113 See receiving stamp on Exhibit "P-5" / "R-13", BIR Records, Folder II, p. 1044.

RESPONDENT'S RIGHT TO COLLECT THE SUBJECT DEFICIENCY TAXES HAS ALREADY PRESCRIBED.

As to whether respondent's right to collect the taxes has prescribed, he or she avers that the applicable period is five (5) years to be reckoned from the issuance of the FAN. However, as the Protest to the FAN and the first MR were granted and were endorsed for further evaluation, the prescriptive period to collect was effectively suspended.

Section 222(b) in relation to Section 222(d) of the NIRC of 1997, as amended, provides for the proper prescriptive period of collection should the assessment be issued within a period agreed upon by the parties. Put differently, when the parties execute a Waiver of the Defense of Prescription under the Statute of Limitation of the NIRC, a certain prescriptive period to collect is applicable. The pertinent provisions state:

> ...
> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -*
>
> ...
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, **both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.**
>
> ...
>
> (d) **Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period.** The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.[114]
>
> ...

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

As an exception to the general rule, periods of assessment that are validly extended through the parties' execution of an agreement will be collected through distraint, levy or court proceeding within five (5) years, to be reckoned from the period agreed upon.

In this case, the LOA for the assessment for TY 2010 was issued on 27 March 2012. Petitioner and respondent validly executed four (4) waivers[115] that extended the prescriptive period to assess until **30 June 2015**. Applying the provisions of Section 222(b) and (d) of the NIRC of 1997, as amended, respondent's right to collect the taxes will be counted five (5) years from the last agreed period to assess, or from 30 June 2015.

Corollarily, Section 223 of the same law provides for instances when the running of the statute of limitation may be suspended, to wit:

> ...
>
> **SEC. 223**. *Suspension of Running of Statute of Limitations*. - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[116]
>
> ...

The above section is plainly worded and could hardly be a subject of any other interpretation. To suspend the running of the prescriptive periods for assessment and collection, the CIR must have granted the request for reinvestigation.[117]

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115 Supra at notes 7, 9, 11 and 13.

116 Emphasis supplied and italics in the original text.

117 *Bank of the Philippine Islands (Formerly: Far East Bank and Trust Company) v. Commissioner of Internal Revenue*, G.R. No. 174942, 07 March 2008.

In the case at bar, it is noted that on 21 May 2015, petitioner filed a Protest to the FAN (by way of a request for reinvestigation). On 03 July 2015, respondent granted the same and gave petitioner a period of 60 days (from the date of filing the Protest) to submit the documentary evidence to support its arguments.[118] Thus, with respondent's clear and unequivocal grant of the request for reinvestigation, the prescriptive period to collect (of 30 June 2015) was deemed suspended pursuant to Section 223 of the NIRC of 1997, as amended.

The next pivotal question is when should the prescriptive period of collection be counted from?

The case of the *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[119] is instructive. There, the Supreme Court enumerated several cases where the BIR had granted the taxpayer's request for reinvestigation and the actual reinvestigation resulted in the issuance of a reconsidered or an amended assessment. The relevant portions of the Decision read —

> ...
>
> In *Querol v. Collector of Internal Revenue*, the BIR, after receiving the protest letters of taxpayer Querol, sent a tax examiner to San Fernando, Pampanga, to conduct the reinvestigation; as a result of which, the original assessment against taxpayer Querol was revised by permitting him to deduct reasonable depreciation. In another case, *Republic of the Philippines v. Lopez*, taxpayer Lopez filed a total of four petitions for reconsideration and reinvestigation. The first petition was denied by the BIR. The second and third petitions were granted by the BIR and after each reinvestigation, the assessed amount was reduced. The fourth petition was again denied and, thereafter, the BIR filed a collection suit against taxpayer Lopez. When the taxpayers spouses Sison, in *Commissioner of Internal Revenue v. Sison*, contested the assessment against them and asked for a reinvestigation, the BIR ordered the reinvestigation resulting in the issuance of an amended assessment. Lastly, in *Republic of the Philippines v. Oquias*, the BIR granted taxpayer Oquias's request for reinvestigation and duly notified him of the date when such reinvestigation would be held; only, neither taxpayer Oquias nor his counsel appeared on the given date.

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[118] Supra at note 25.
[119] G.R. No. 139736, 17 October 2005; Citations omitted, italics in the original and emphasis supplied.

> **In all these cases, the request for reinvestigation of the assessment filed by the taxpayer was evidently granted and actual reinvestigation was conducted by the BIR, which eventually resulted in the issuance of an amended assessment.** On the basis of these facts, this Court ruled in the same cases that the period between the request for reinvestigation and the revised assessment should be subtracted from the total prescriptive period for the assessment of the tax; and, **once the assessment had been reconsidered at the taxpayer's instance, the period for collection should begin to run from the date of the reconsidered or modified assessment.**
>
> ...

From the foregoing, should the CIR grant the request of reinvestigation and the same results in a reconsidered or modified assessment, the period for collection should begin to run from the date of the said assessment. Relative thereto, in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[120], the Supreme Court also ruled that the period for collection of the assessed taxes begins to run on the date that the **assessment notice had been released, mailed or sent to the taxpayer**.

With the above parameters and as a reply to petitioner's transmittal of its supporting documents, respondent issued the FDDA (on 04 November 2015) where he or she maintained the deficiency IT assessment, as well as the other tax assessments, for petitioner's failure to submit the required documents to address the noted findings. While the assessments contained in the FDDA (except for the computed interest) was not modified, it remained as the result of the CIR's reinvestigation. Being thus the reconsidered assessment, the prescriptive period to collect will start to run on petitioner's receipt of the FDDA on **05 November 2015** (as previously discussed above). Counting five (5) years therefrom, respondent had until **05 November 2020** to collect the deficiency taxes.

We are not unaware that petitioner subsequently filed its first MR to the FDDA. As can be gleaned from the records, the CIR had endorsed the said MR for further evaluation. However, even if the CIR had acted on the said MR, the same could not and did not toll the running of the prescriptive to collect.

[120] G.R. No. 197515, 02 July 2014.

The wordings of Section 223 of the NIRC of 1997, as amended, are clear. Only a request for reinvestigation which the CIR has granted will suspend the running of the statute of limitations and not request for reconsideration. A reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment which will be limited to the evidence already at hand.[121] This justifies why the former can suspend the running of the statute of limitations on the collection of the assessed tax, while the latter cannot.[122]

Lastly, with regard to respondent's argument that BIR had issued multiple COVID-19 issuances that extended the prescriptive periods of assessment and collection, it is helpful to revisit these issuances.

On 27 March 2020 and 09 April 2020, BIR issued RR No. 7-2020[123] and RR No. 10-2020[124] to suspend the running of the statute of limitation under Sections 203 and 222, in relation to Section 223 of the NIRC of 1997, as amended. Both ordered the extension of due dates for <u>60 days after the lifting of the order of state of emergency</u>.

On 29 April 2020, BIR issued RR No. 11-2020[125], amending Section 2 of RR No. 10-2020 and defined the term "quarantine" to mean any announcement by the National Government resulting to limited operations and mobility, including, but not limited to, community quarantine, enhanced community quarantine (**ECQ**), modified community quarantine, and general community quarantine (**GCQ**). Moreover, it amended the extension period to mean as <u>60 days after the lifting of the quarantine</u>.

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121 *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, supra at note 119.
122 Id.
123 Supra at note 88.
124 Amends Section 2 of Revenue Regulations No. 7-2020 Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of Any Document and the Payment of Taxes Pursuant to Section 4(z) of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act".
125 Amends Section 2 of the Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

Thereafter, on 14 May 2020, BIR issued RR No. 12-2020[126] to further limit the definition of quarantine to limited operations and mobility, including, but not limited to, community quarantine, ECQ, and modified enhanced community quarantine (**MECQ**) only.

From the foregoing issuances, BIR had intended to exclude the days when the affected areas were to be placed under restrictive quarantines of ECQ and MECQ. To bolster this intention, on 07 December 2020, BIR issued RMC No. 136-2020[127] mandating the exclusion of 137 days from the counting of the prescriptive period to assess and to collect during which the National Capital Region (**NCR**) was placed under ECQ and MECQ from 16 March 2020 to 31 May 2020.[128] To confirm, 137 days would be equivalent to seventy-seven (77) days when NCR was placed under ECQ and MECQ from 16 March 2020 to 31 May 2020, plus an additional 60 days pursuant to RR No. 11-2020.

It can be presumed that when the affected jurisdiction had been placed under ECQ or MECQ, BIR considered the duration of the said period as a suspension for the running of statute of limitations since their personnel were unable to continue the assessment or the collection of the deficiency taxes. However, when areas were placed under lesser quarantine restrictions such as GCQ and Modified GCQ (**MGCQ**), the BIR did not intend to exclude the said period in the counting of the prescriptive period to assess and collect.

Accordingly, to determine the duration of the suspension *vis-à-vis* the prescriptive period to collect in 2020, consideration should be given to the quarantine restrictions imposed from 01 June 2020 up to 05 November 2020 to compute the total number of days (to exclude in the running of the statute of limitations). Below is a summary of the quarantine restrictions for NCR until 30 November 2020:

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126 Amends Revenue Regulations No. 10-2020, as Amended by Revenue Regulations No. 11-2020, Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of Any Document and the Payment of Taxes Pursuant to Section 4(z) of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act".

127 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.

128 See Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Disease, Resolution No. 13, Series of 2020, 17 March 2020; IATF for the Management of Emerging Infectious Disease, Resolution No. 20, Series of 2020, 06 April 2020; IATF for the Management of Emerging Infectious Disease, Resolution No. 29, Series of 2020, 27 April 2020; IATF for the Management of Emerging Infectious Disease, Resolution No. 37, Series of 2020, 15 May 2020.

Dates	Imposed Quarantine Restriction	IATF Resolution
01 June 2020 to 15 June 2020	GCQ	IATF Resolution No. 40, 27 May 2020
16 June 2020 to 30 June 2020	GCQ	IATF Resolution No. 46-A, 15 June 2020
01 July 2020 to 15 July 2020	GCQ	IATF Resolution No. 50-A, 29 June 2020
16 July 2020 to 31 July 2020	GCQ	IATF Resolution No. 55-A, 14 July 2020
01 August 2020 to 03 August 2020	GCQ	IATF Resolution No. 60-A, 30 July 2020
04 August 2020 to 18 August 2020	**MECQ**	**Memorandum from the Executive Secretary dated 03 August 2020**
19 August 2020 to 31 August 2020	GCQ	IATF Resolution No. 64, 17 August 2020
01 September 2020 to 30 September 2020	GCQ	IATF Resolution No. 66, 27 August 2020
01 October 2020 to 31 October 2020	GCQ	IATF Resolution No. 75-A, 28 September 2020
01 November 2020 to 30 November 2020	GCQ	IATF Resolution No. 81, 26 October 2020

Apart from 16 March 2020 to 31 May 2020, NCR was again placed under MECQ from 04 August 2020 to 18 August 2020, or for a total of fifteen (15) days. Following RR No. 11-2020, as amended by RR No. 12-2020, adding 60 days to the said quarantine period, We are also to exclude a total of seventy-five (75) days which suspended the running of statute of limitations. Hence, a total of 212 days (137 days *per* RMC No. 136-2020 and 75 days *per* RR Nos. 11-2020 and 12-2020) should be excluded in determining the new prescription period to collect.

Counting from 05 November 2020, respondent's right to collect the deficiency taxes (after considering the COVID-19 issuances) now fell on **<u>05 June 2021</u>**. Therefore, before the said date, respondent should have initiated collection through the sanctioned methods. To reiterate, the CIR's collection efforts are initiated by distraint, levy, or court proceeding.[129] Thus, when a warrant of distraint and/or levy (**WDL**) is served on the taxpayer, the collection proceedings are necessarily deemed to have already commenced.[130] On the other hand, a judicial

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[129] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, supra at note 83.

[130] Id.

action for the collection of a tax is initiated: (*a*) by the filing of a complaint with the court of competent jurisdiction; or (*b*) where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.[131]

In this case, despite petitioner's filing of the instant Petition for Review on 19 March 2021, the records indicate that it was only on **16 July 2021** that respondent filed his or her Answer[132] and demanded for the payment of the deficiency taxes.[133] Hence, the same was filed beyond the prescriptive period to collect of **05 June 2021**.

Further, although it appears in the BIR Records that a WDL was issued on 31 May 2021[134], there is no proof that it was validly served on or sent to petitioner. Based on the Progress Report relating to the service of the WDL, the RO resorted to constructive service claiming that petitioner supposedly refused to accept the same.[135]

Section 3.1.6 of RR No. 18-2013 states that substituted service (also known as constructive service) may be employed should the person's registered address or place of address is known but the person refused to receive the notice –

> ...
>
> 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:
>
> ...
>
> (ii) Substituted service can be resorted to ...
>
> ...
>
> 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**

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131 Id.
132 Supra at note 52.
133 See prayer in the Answer, Division Docket, p. 98.
134 BIR Records, Folder I, p. C67.
135 Id., p. C68.

> **shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.**
>
> *"Disinterested witnesses"* refers to persons of legal age other than employees of the Bureau of Internal Revenue.[136]
>
> ...

A scrutiny of the WDL herein yields that it was only RO Assanodin D. Ala who signed as witness on the bottom portion thereof. Conspicuously, no barangay official appears to have been invited to attest to the fact that petitioner or its representative had indeed refused to receive the WDL. Further, the WDL does not reflect the names and signatures of the supposed two (2) disinterested witnesses. With this, the BIR failed to comply with the requisites of the above proviso for a substituted service to be considered as valid and effective.

In view of the attending circumstances, and although the subject assessments issued against petitioner had long become final and executory, respondent's right to collect the said deficiency taxes has indubitably prescribed.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Master Sports Corporation on 19 March 2021 is hereby **GRANTED** as the right of respondent Commissioner of Internal Revenue to collect the subject deficiency taxes has prescribed.

Accordingly, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising from the Final Decision on Disputed Assessment dated 04 November 2015 and the Decision (in the Matter of the Request for Reconsideration of the Decision denying the protest of Master Sports Corporation and Demanding Payment of the aggregate amount of ₱38,523,211.09 representing income tax, value-added tax, expanded withholding tax, withholding tax on compensation and documentary stamp tax for taxable year 2010) dated 03 February 2021.

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

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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