REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LEMCON (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10680

Members:

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

Promulgated:

JAN 09 2026 1:04 p.m.

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DECISION

ANGELES, J.:

THE CASE

The *Petition for Review* filed on November 18, 2021, prays that the *Final Decision on Disputed Assessment* (FDDA) dated September 28, 2020 issued by respondent against petitioner on its alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), fringe benefit tax (FBT), final withholding of VAT (FWVAT), and documentary stamp tax (DST), for taxable year (TY) 2017, in the total amount of ₱132,555,366.00, inclusive of surcharges, interest and compromise penalties, be cancelled, annulled, reversed and set aside.[1]

THE PARTIES

Petitioner Lemcon (Philippines) Inc. is a domestic corporation registered with the Securities and Exchange Commission, and the Bureau of Internal Revenue (BIR) under Taxpayer Identification

[1] Summary of the Case, Pre-Trial Order dated July 19, 2022, Docket – Vol. 4, p. 1274.

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Number 211-866-444-000,[2] with address at Unit 41 Laguna Technopark SFB 4 Loma 4024, City of Biñan, Laguna.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue and has the power, among others, to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the Tax Code or other laws administered by the BIR.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On April 22, 2019, petitioner received the *Letter of Authority* (LOA) No. 044-2019-00000170 (eLA201600068688) issued by Regional Director (RD) Glen A. Geraldino of Revenue Region No. 8 - Makati City, authorizing Revenue Officer (RO) Leanne Panopio/Group Supervisor Debbie Buhain to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including DST and other taxes for the period from January 1, 2017 to December 31, 2017.[5]

Petitioner also received Notices *(First Notice for Presentation of Records* and *Second and Final Notice)* for the Presentation of Records dated May 2, 2019 and May 14, 2019, respectively.[6]

On June 25, 2019, petitioner received the letter dated June 24, 2019 entitled *Notice for Informal Conference* with attached *Details of Discrepancies*, and requesting the petitioner to go to the BIR office, within ten (10) days upon receipt thereof, for an informal conference.[7]

On June 28, 2019, petitioner wrote a letter to respondent requesting approval for the meeting to be moved to another date because the *Details of Discrepancies* contains many items which required a lot of reconciliation, and the ten (10)-day period given by the respondent was insufficient.[8]

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[2] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Simplification of Issues* (JSFSI), Docket – Vol. 3, p. 1256.
[3] Exhibit "P-3-A", Docket – Vol. 3, pp. 764 to 766.
[4] Par. 2, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1256.
[5] Par. 3, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1257; Exhibit "P-4", Docket – Vol. 3, pp. 767 to 769.
[6] Par. 4, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1257; Exhibits "P-5" and "P-5-A", Docket – Vol. 3, pp. 770 to 771.
[7] Par. 5, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1257; Exhibits "P-6" and "P-6-A", Docket – Vol. 3, pp. 772 to 777.
[8] Par. 6, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1257; Exhibits "P-7" and "P-7-1", Docket – Vol. 3, pp. 778 to 779.

Respondent issued the *Preliminary Assessment Notice* (PAN) dated August 14, 2019 *Details of Discrepancies,* bearing the address 19A 1st Avenue, Mañalac Estate, Bagumbayan, Taguig City, for alleged deficiency taxes in the amount of ₱117,594,514.48,[9] inclusive of interest, surcharges and penalties computed until September 30, 2019, and compromise penalty in the amount of ₱100,000.00, which petitioner received on August 15, 2019.[10]

On August 30, 2019, petitioner filed its letter reply to the PAN dated August 29, 2019.[11]

Thereafter, on September 24, 2019, respondent issued the *Formal Letter of Demand* (FLD) with *Assessment Notices* and *Details of Discrepancies,* bearing the same address 19A 1st Avenue, Mañalac Estate, Bagumbayan, Taguig City, for alleged deficiency taxes amounting to ₱118,496,286.02,[12] inclusive of interest, surcharges and penalties computed until October 30, 2019, and compromise penalty in the amount of ₱100,000.00, which petitioner received on October 1, 2019.[13]

On October 30, 2019, petitioner filed its *Protest to the Final Assessment Notices (FAN) and Formal Letter of Demand dated September 24, 2019.*[14]

Subsequently, on September 28, 2020, respondent issued the FDDA, with attached *Amended Assessment Notices* and *Details of Discrepancies,* bearing the same address 19A 1st Avenue, Mañalac Estate, Bagumbayan, Taguig City, for alleged deficiency taxes in the total amount of ₱132,555,366.00,[15] inclusive of interest, surcharge, and penalties computed until November 20, 2020 and compromise penalty in the amount of ₱100,000.00. Petitioner's records show that it received the FDDA on October 7, 2020, but respondent's records show that it was received by petitioner on October 8, 2020.[16]

On November 6, 2020, petitioner filed a *Motion for Reconsideration on the Final Decision on Disputed Assessment for*

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[9] Total amount *excludes* the ₱100,000.00 compromise penalty.
[10] Par. 7, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1257; Exhibits "P-8" and "P-8-A", Docket – Vol. 3, pp. 781 to 788.
[11] Exhibit "P-9", Docket – Vol. 3, pp. 789 to 795.
[12] Total amount *excludes* the ₱100,000.00 compromise penalty.
[13] Par. 8, Stipulated Facts, JSFSI, Docket – Vol. 3, p. 1257; Exhibits "P-10", "P-10-A" to "P-10-I", Docket – Vol. 3, pp. 796 to 811.
[14] Exhibits "P-11" to "P-11-AA", Docket – Vol. 3, pp. 812 to 1057.
[15] Total amount *includes* the ₱100,000.00 compromise penalty.
[16] Par. 9, Stipulated Facts, JSFSI, Docket – Vol. 3, pp. 1257 to 1258; Exhibits "P-12", "P-12-A" to "P-12-C", Docket – Vol. I, pp. 372 to 383; Exhibits "R-7" to "R-7-9" and "R-7-11", BIR Records (Exhibit "R-8"), pp. 806 to 817.

Taxable Year 2017 dated November 5, 2020 with the Office of respondent.[17]

On October 20, 2021, Petitioner filed with the BIR its *Request for Lifting of Warrant of Garnishment* dated October 19, 2021.[18]

Pending action to the said *Motion for Reconsideration*, petitioner allegedly received on October 21, 2021 the letter of even date,[19] by email, from its depositary bank, Bank of the Philippine Islands (BPI), informing them of the Notice of Garnishment of its account.

PROCEEDINGS BEFORE THIS COURT

As stated earlier, on November 18, 2021, petitioner filed the present *Petition for Review with Motion to Suspend Collection of Tax and to Lift Warrant of Garnishment*.[20]

Within the period granted by the Court,[21] on February 17, 2022, respondent filed his *Answer*,[22] interposing special and affirmative defenses.

Respondent submitted his *Comment/Opposition (To Petitioner's Motion to Suspend Collection of Tax and to Lift Warrant of Garnishment)* on March 21, 2022.[23]

During the hearings of petitioner's *Motion to Suspend Collection of Tax and to Lift Warrant of Garnishment* on December 9, 2021 and March 22, 2022, petitioner presented the testimony of its Vice President for Finance, Mr. Harsyl R. Tan.[24]

On April 28, 2022, respondent transmitted the *BIR Records* for this case, in one (1) folder, consisting of 1,009 pages, consecutively numbered.[25]

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[17] Exhibits "P-13" and "P-13-A", Docket – Vol. 3, pp. 1070 to 1081.
[18] Exhibit "P-14", Docket – Vol. 3, p. 1094.
[19] Exhibit "P-1", Docket – Vol. 3, p. 752.
[20] Docket – Vol. I, pp. 6 to 41.
[21] Respondent's *Motion for Extension of Time to File Answer* dated January 7, 2022, and Resolution dated March 2, 2022, Docket – Vol. 2, pp. 567 to 568, and 646 to 647, respectively.
[22] Docket – Vol. 2, pp. 554 to 562.
[23] Docket – Vol. 2, pp. 648 to 651.
[24] Exhibits "P-20" and "P-21", Docket – Vol. I, pp. 42 to 59 and 464 to 469, respectively; Minutes of the hearing held on, and Order dated, December 9, 2021, Docket – Vol. I, p. 473, and Docket – Vol. 2, pp. 474 to 475, respectively; Exhibit "P-26", Docket – Vol. 2, pp. 479 to 482; Minutes of the hearing held on March 22, 2022, Docket – Vol. 2, p. 656.
[25] Respondent's *Manifestation (BIR Records)* [undated], BIR Records (Exhibit "R-8").

The Pre-Trial Conference was set, and held on May 31, 2022.[26] Prior thereto, *Respondent's Pre-Trial Brief* and petitioner's *Pre-Trial Brief* were both filed on May 25, 2022.[27]

On June 1, 2022, petitioner filed its *Formal Offer of Evidence*,[28] to which respondent posted his *Comment/Opposition (To Petitioner's Formal Offer of Evidence dated June 01, 2022)* on June 13, 2022.[29] In the Resolution dated September 1, 2022,[30] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-11-O" and "P-15," for failure to present originals for comparison.

The Court, in its Resolution dated October 10, 2022,[31] then granted petitioner's *Motion to Suspend Collection of Tax and to Lift Warrant of Garnishment*, subject to the posting of cash or surety bond equivalent to the amount of the basic tax assessed.

However, on December 1, 2022, petitioner filed a *Motion for Partial Reconsideration*,[32] praying that the Resolution dated October 10, 2022 be modified so as to dispense with the requirement for the posting of a bond, or in the alternative, to reduce the same to a more reasonable amount that will not result in forcing the petitioner out of business. Respondent then posted his *Comment/Opposition (To Petitioner's Motion for Partial Reconsideration dated November 29, 2022)* on January 6, 2023.[33] In the Resolution dated March 3, 2023,[34] the Court denied petitioner's *Motion for Partial Reconsideration* for lack of merit.

In the meantime, on June 30, 2022, the parties submitted their *Joint Stipulation of Facts and Simplification of Issues*,[35] which was admitted and approved by the Court in its Resolution dated July 8, 2022,[36] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 19, 2022 was then issued.[37]

For the main case, trial ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

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[26] Notice of Pre-Trial Conference dated February 28, 2022, Docket – Vol. 2, pp. 643 to 644; Minutes of the hearing held on, and Order dated May 31, 2022, Docket – Vol. 2, pp. 738 and 657 to 659, respectively.
[27] Docket – Vol. 2, pp. 693 to 699, and 702 to 710, respectively.
[28] Docket – Vol. 3, pp. 739 to 751.
[29] Docket – Vol. 3, pp. 1230 to 1242.
[30] Docket – Vol. 4, pp. 1335 to 1337.
[31] Docket – Vol. 4, pp. 1345 to 1355.
[32] Docket – Vol. 4, pp. 1388 to 1395.
[33] Docket – Vol. 4, pp. 1415 to 1418.
[34] Docket – Vol. 4, pp. 1428 to 1434.
[35] Docket – Vol. 3, pp. 1256 to 1260.
[36] Docket – Vol. 4, p. 1270.
[37] Docket – Vol. 4, pp. 1274 to 1285.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Harsyl R. Tan,[38] petitioner's Vice President for Finance; and (2) Ms. Maria Gracia L. Morfe,[39] the Court-commissioned Independent Certified Public Accountant (ICPA).[40]

The *ICPA Report* was submitted on November 17, 2022.[41]

On August 18, 2023, petitioner filed its *Formal Offer of Evidence*,[42] to which respondent filed *via* accredited courier his *Comment/Objection (To Petitioner's Formal Offer of Evidence)* on September 18, 2023.[43] In the Resolution dated February 15, 2024,[44] the Court denied petitioner's various offered exhibits due to the following reasons: (1) for not being found in the records; (2) for being unreadable/blank pages; (3) for being mere print out copies as reflected in the document, without any certification that these are faithful reproduction of the originals; (4) for lack of certification that the same are faithful reproduction of the originals; and (5) for failure to submit the originals for comparison.

For his part, respondent presented the testimony of RO Leanne Panopio.[45]

On April 22, 2024, respondent filed through accredited courier his *Formal Offer of Evidence*.[46] However, petitioner failed to file its comment thereon.[47] In the Resolution dated October 8, 2024,[48] the Court admitted respondent's offered exhibits, *except* Exhibits "R-7-2-1," "R-7-10," and "R-7-12," for failure of the formal offer to correspond with the document actually marked.

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[38] Exhibit "P-27", Docket – Vol. 4, pp. 1301 to 1319; Minutes of the hearing held on, and Order dated, August 15, 2022, Docket – Vol. 4, pp. 1320 to 1322.
[39] Exhibit "P-9339", Docket – Vol. 4, pp. 1443 to 1447; Minutes of the hearing held on, and Order dated, July 19, 2023, Docket – Vol. 4, pp. 1471 to 1473.
[40] *Oath of Commission* dated September 29, 2022, Docket – Vol. 4, p. 1339; Minutes of the hearing held on, and Order dated, September 29, 2022, Docket – Vol. 4, pp. 1340 to 1342.
[41] Exhibit "P-28", Docket – Vol. 4, pp. 1356 to 1385.
[42] Docket – Vol. 4, pp. 1475 to 1488.
[43] Docket – Vol. 5, pp. 1944 to 1980.
[44] Docket – Vol. 5, pp. 1986 to 1998.
[45] Exhibit "R-9", Docket – Vol. 2, pp. 582 to 590; Minutes of hearing held on, and Order dated, April 16, 2024, Docket – Vol. 5, pp. 1999 to 2000-A.
[46] Docket – Vol. 5, pp. 2001 to 2005.
[47] Records Verification Report dated May 15, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 2011.
[48] Docket – Vol. 5, pp. 2016 to 2018.

Thereafter, on November 11, 2024, petitioner posted its *Memorandum*,[49] while the *Memorandum (For the Respondent)* was posted on November 14, 2024.[50]

The present case was submitted for decision on December 13, 2024.[51]

THE STIPULATED ISSUES

Petitioner and respondent jointly stipulate on the following issues for this Court's resolution, to wit:

> "1) Whether or not petitioner is liable to pay deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, withholding tax on fringe benefits, final withholding tax on value-added tax, documentary stamp tax and compromise penalty for taxable year 2017, in the total amount of PhP132,455,366.00;
>
> 2) Whether or not respondent may validly enforce the collection of alleged deficiency taxes, the assessments for which have not become final, executory and demandable; and
>
> 3) Whether or not petitioner was denied due process when respondent issued the Warrant of Garnishment and distrained petitioner's bank account."[52]

Petitioner's arguments

Petitioner argues the following: *(1)* that it is not liable for alleged deficiency taxes; *(2)* that respondent cannot validly enforce the collection of alleged deficiency taxes based on assessment that has not become final, executory and demandable; *(3)* that respondent violated petitioner's right to due process when it issued the *Warrant of Garnishment* (WOG) and distrained petitioner's bank account without issuing and serving his decision on the administrative appeal; *(4)* that the FLD, *Assessment Notices* and FDDA are void for failure to indicate a definite amount of tax liabilities and due date for payment as required under Section 228 of the Tax Code, as amended; and *(5)* that petitioner was denied due process when respondent disregarded the evidence presented and ignored the offer to present the originals of the documentary evidence submitted.

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[49] Docket – Vol. 5, pp. 2020 to 2045.
[50] Docket – Vol. 5, pp. 2048 to 2060.
[51] Minute Resolution dated December 13, 2024, Docket – Vol. 5, p. 2062.
[52] Issues, JSFSI, Docket – Vol 3, pp. 1258 to 1259.

Respondent's counter-arguments

Respondent, for his part, contends the following: *(1)* that on the merits of the assessment, the PAN, FLD and FDDA contained the facts, law, rules and regulations on which the assessment was made; *(2)* that respondent observed due process in the issuance of WOG after the issuance of the FDDA, pursuant to Section 3 of Revenue Memorandum Order No. 42-2010; and *(3)* that the deficiency tax assessments sufficiently informed petitioner of the facts and the law on which the assessments were based.

THE COURT'S RULING

The present *Petition for Review* must be dismissed for lack of jurisdiction.

The Court notes that the parties did not raise any questions as to the jurisdiction of this Court over the case before Us.

To obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings. Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at any time of the proceedings, even during appeal.[53]

To be sure, the matter of jurisdiction may be ruled upon regardless of the stage of the proceedings, considering that a judgment rendered without jurisdiction is null and void, and a void judgment cannot be the source of any right whatsoever.[54]

Thus, this Court shall first determine whether it has jurisdiction to entertain the present appeal.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in

[53] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.
[54] Refer to *El Greco Ship Manning and Management Corporation vs. Commissioner of Customs*, G.R. No. 177188, December 4, 2008.

question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[55]

The case lies under the "Other Matters" jurisdiction of the Court

Sections 7(a)(1) and (2), and 11 of Republic Act (RA) No. 1125,[56] as amended by RA 9282,[57] confers jurisdiction to this Court relative to decisions and inactions of respondent involving disputed assessments, or other matters arising under the National Internal Revenue Code (Tax Code), and states the manner of appealing the same, to wit:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphases and underscoring supplied)*
>
> xxx xxx xxx
>
> "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** xxx

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[55] *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs*, G.R. No. 209830, June 17, 2015, Emphasis supplied.
[56] AN ACT CREATING THE COURT OF TAX APPEALS.
[57] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **may file an appeal with the CTA within thirty (30) days <u>after the receipt of such decision or ruling</u>** 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 <u>from the receipt of the decision or ruling</u>** or **<u>in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon</u>**. xxx." *(Emphases and underscoring supplied)*

Based on Section 7 of RA No. 1125, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the Tax Code, or related laws administered by the BIR.[58] In addition, any party adversely affected by the said decisions or ruling may file an appeal to this Court within thirty (30) days from receipt thereof.

The Supreme Court ruled, in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[59] that this Court has jurisdiction to determine the validity of a *Warrant of Distraint and/or Levy* ("WDL"), thus:

> ...[t]he appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. **The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected. *(Emphasis supplied)*

Moreover, the Supreme Court[60], referring to Section 7(a)(1) of Republic Act (RA) No. 1125, said:

> Indeed, a plain reading of the provision yields the inevitable conclusion that the CTA has the power to review not only matters arising or incidental to tax assessments or refunds, but also to any case arising from the application of the provisions of the Tax Code or other tax laws that are administered by the BIR. **In fact, the Court has affirmed the CTA's "other matters" jurisdiction**

[58] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[59] G.R. No. 162852, December 16, 2004.
[60] *Commissioner of Internal Revenue vs. Pacific Hub Corporation*, G.R. No. 252944, November 27, 2024

> **over cases involving:** (a) the determination of whether the right of the CIR to collect the validly assessed tax has prescribed; **(b) cases seeking the cancellation and withdrawal of a warrant of distraint and/or levy;** (c) cases seeking a determination of the validity of waivers of the statute of limitations as well as the proper availment of tax amnesty; and (d) cases on the proper exercise of the CIR's power to compromise delinquent accounts and to grant an informer's reward. *(Emphasis supplied)*

While the foregoing cases refer to a WDL, the same still finds application insofar as the present case is concerned. This is so because a WOG is akin to a WDL, a matter arising under the Tax Code, considering that garnishment is also one of the summary administrative remedies to enforce the collection of unpaid taxes as provided for under Section 208 of the Tax Code of 1997, to wit:

> "SEC. 208. *Procedure for Distraint and Garnishment.* – xxx
>
> **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 turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government." *(Emphasis supplied)*

Thus, just as in the case where respondent or the BIR proceeds to distraint and/or levy without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, the then available and adequate remedy to the concerned taxpayer, in case of the BIR's issuance of a WOG, is to appeal to this Court.

The letter from BPI is not respondent's final decision that is appealable to this Court

Section 228 of the Tax Code provides for the procedure and manner upon which a taxpayer may protest an assessment, *viz.*:

> "Section 228. *Protesting of Assessment.* – ...
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

The Supreme Court[61] clarified that the afore-quoted provision should be interpreted as such:

In the case of a decision on the protest, the appeal must be filed 30 days from receipt of the adverse decision. **On the other hand, in the case of inaction on the protest**, this Court held in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue* and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue* that **a taxpayer may either:**

(1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessment; or

(2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is true even if the 180- day period for the Commissioner to act on the disputed assessment had already expired.

These options are mutually exclusive and resort to one bars the application of the other. *(Emphases supplied)*

It is clear from the foregoing that if there is inaction on the protest, the taxpayer may await the final decision of respondent on the same and then appeal such final decision to the Court within thirty (30) days from receipt of a copy of such decision.

[61] *Light Rail Transit Authority vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue,* G. R. No. 231238, 20 June 2022.

In this case, respondent, through Regional Director Glen A. Geraldino, issued the FDDA on September 28, 2020,[62] and subsequently, petitioner filed a *Motion for Reconsideration on the Final Decision on Disputed Assessment for Taxable Year 2017* dated November 5, 2020 with the Office of respondent.[63] Petitioner alleges that respondent has not acted on such request for reconsideration and instead it received **the letter dated October 21, 2021 by email from BPI**, informing them that BPI received a Notice of Garnishment and that petitioner's account is being seized, distrained and garnished. Petitioner further claims that it was not able to receive a copy of the WOG from respondent[64].

Petitioner avers that these acts of respondent made at a time that he has not yet decided on the administrative appeal may be construed to be a denial of the protest or administrative appeal. Accordingly, it reckoned the thirty (30) day period to file the present *Petition* before this Court from the time it received by email the said letter from BPI, or until November 21, 2021[65]. Effectively, petitioner is claiming that this letter sent thru email by BPI should be construed as the final decision of respondent for purposes of filing an appeal before this Court.

The Court disagrees.

The letter sent *via* email by petitioner's depositary bank, BPI, informing it that its account thereon is being seized, distrained and garnished **cannot be considered as** the final decision of respondent that may be brought on appeal before the Court.

The Court is aware that in *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.,*[66] the Supreme Court held:

> At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds to distrain and levy or institutes an action for collection in the ordinary courts, this Court has considered this is an **implied denial**. **The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it was notified of the warrant** or collection suit. *(Emphasis and underscoring supplied)*

[62] Par. 9, Stipulated Facts, JSFSI, Docket – Vol. 3, pp. 1257 to 1258; Exhibits "P-12", "P-12-A" to "P-12-C", Docket – Vol. I, pp. 372 to 383; Exhibits "R-7" to "R-7-9" and "R-7-11", BIR Records (Exhibit "R-8"), pp. 806 to 817.
[63] Exhibits "P-13" and "P-13-A", Docket – Vol. 3, pp. 1070 to 1081.
[64] Petitioner's *Memorandum*, par. 19, Docket - Vol. 5, p. 2024
[65] Pars. 11 to 13, *Petition for Review with Motion to Suspend Collection of Tax and to Lift Warrant of Garnishment*, Docket – Vol. I, pp. 9 to 10.
[66] G.R. No. 225809, March 17, 2021.

While the Court notes that in the above-quoted conclusion of the Supreme Court, what was involved was the actual WDL that was received by the taxpayer. In the instant case, the Court sees no reason why It should not apply the same principle herein where petitioner failed to present and offer the WOG allegedly issued by the BIR, considering that, as previously discussed, a WOG is akin to a WDL.

The rules on the remedy of the taxpayer if it chose to await the final decision of respondent is clear and **admits no exception**: the appeal to such final decision must be filed within thirty (30) days after **receipt of a copy of such decision**.

Petitioner was not prevented from requesting a copy of the WOG itself from the BIR. Instead of filing the present *Petition* pursuant to the letter from BPI dated October 21, 2021 informing petitioner that its account therein is being garnished, what petitioner should have done as soon as it was allegedly notified by BPI was to request for a copy of the WOG from respondent. To emphasize, **the letter by BPI dated October 21, 2021 is not the final decision of respondent contemplated** in the above cited laws and jurisprudence. Therefore, it was incorrect for petitioner to have used the said letter by BPI as the basis for filing the present *Petition*.

In any case, the Court cannot determine if the instant Petition was timely filed

Even assuming *arguendo* that the letter from BPI dated October 21, 2021 could be considered as the final decision of respondent, the present *Petition* would still fail, as there is no way for the Court to determine if the appeal was timely filed.

First, the Court notes that prior to alleged receipt of the alleged BPI letter dated October 21, 2021, petitioner already filed with the BIR its *Request for Lifting of Warrant of Garnishment* dated October 19, 2021 on October 20, 2021.

Second, petitioner's *Request for Lifting of Warrant of Garnishment* did not in any way state the exact date petitioner's depositary bank informed the former of the garnishment.

Third, it should be noted that the BPI letter dated October 21, 2021,[67] informing petitioner that it received a Notice of Garnishment

[67] Exhibit "P-1", Docket – Vol. 3, p. 752.

against petitioner's account, does not bear the date of receipt by petitioner, nor was the covering email attached thereto.

Finally, petitioner failed to present any testimony that would prove and establish petitioner's date of receipt of the said notification from its depositary bank.[68]

Considering the circumstances above, it is not possible for the Court to identify if the instant *Petition* filed on November 18, 2021 was indeed filed within the thirty (30)-day reglementary period to file an appeal before the Court.

In fine, the Court lacks jurisdiction over the instant *Petition* as: *(1)* the letter from BPI dated October 21, 2021 is not the final decision contemplated by law and jurisprudence that may be brought before the Court on appeal, and *(2)* the timeliness of the instant *Petition* cannot be determined.

Time and again, the Supreme Court has held that the perfection of an appeal, being no more than a statutory privilege, and at once both mandatory and jurisdictional, must be accomplished strictly in the manner and within the period prescribed by law; failing which, the judgment sought to be reviewed attains finality and becomes executory. Thus:

> To stress, the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor.[69] (Citations omitted)

It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[70] The prerequisite of jurisdiction being unsatisfied, this Court is precluded from exercising its power to

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[68] Refer to Q&A No. 7 to 8, Exhibit "P-27", Docket – Vol. 4, p. 1303, where petitioner's witness failed to state when it received the email from BPI notifying it of the Notice of Garnishment.
[69] *Apex Mining Co., Inc., v. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005.
[70] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

examine the merits thereof. The Court is thus foreclosed from entertaining petitioner's asserted arguments.

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

SO ORDERED.

HENRY S. ANGELES
Associate Justice

I CONCUR:

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

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

MA. BELEN RINGPIS-LIBAN
Presiding Justice