REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DIAMOND DRILLING CORPORATION OF THE PHILIPPINES,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10661

Members:

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

Promulgated:

JAN 20 2025
10:50 a.m.

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DECISION

MANAHAN, *J.*:

The *Petition for Review With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction* prays that:

> 1. A *Temporary Restraining Order* be issued *ex parte* upon the filing of this *Petition* restraining respondent, through Revenue Region No. 8B from enforcing the Warrant of Distraint and/or Levy (WDL) dated August 26, 2021 and unlawfully collecting from petitioner alleged deficiency value-added tax (VAT) for taxable period covering January to June 2018.
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> 2. After due notice and hearing, a *Temporary Restraining Order* be issued restraining respondent, through Revenue Region No. 8B from enforcing the WDL dated August 26, 2021 and unlawfully collecting from petitioner alleged deficiency VAT for the same taxable period.
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> 3. After due notice and hearing, a *writ of preliminary injunction* be issued restraining respondent, through Revenue Region No. 8B from

enforcing the WDL dated August 26, 2021 and unlawfully collecting from petitioner alleged deficiency VAT for the same taxable period.

4. After trial, judgment be rendered in favor of petitioner:

4.1. Ordering the withdrawal and cancellation of the WDL dated August 26, 2021 issued against the petitioner.

4.2. Declaring that petitioner is not liable for alleged deficiency VAT in the amount of ₱6,301,195.74 covering the taxable period of January to June 2018.[1]

THE PARTIES

Petitioner Diamond Drilling Corporation of the Philippines is a corporation organized and existing under the law of the Philippines,[2] with address at 20th Floor, Lepanto Building, 8747 Paseo de Roxas, Makati City.[3]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building at Agham Road, Diliman, Quezon City and is being represented in this case by the Legal Officers of the Legal Division, BIR, Revenue Region 8A-Makati, with office address at 36th Floor Exportbank Plaza, Sen. Gil Puyat Ave. corner Chino Roces Ave., Makati City.[4]

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[1] Docket, CTA Case No. 10661. Prayer, *Petition for Review With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*, pp. 28 to 29.

[2] *Id.*, Par. 1, *Petition for Review With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*, vis-à-vis par. 1, *Answer (With Special and Affirmative Defenses With Grounds to Dismiss for Lack of Jurisdiction)*, pp. 6 and 175, respectively.

[3] *Id.*, The Parties, *Petitioner's Memorandum*, vis-à-vis The Parties, *Respondent's Memorandum*, pp. 425 and 448, respectively.

[4] *Id.*, Par. 2, *Petition for Review With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*, vis-à-vis par. 2, *Answer (With Special and Affirmative Defenses With Grounds to Dismiss for Lack of Jurisdiction)*, pp. 7 and 175, respectively.

THE FACTS

On October 17, 2018, petitioner received the *Letter of Authority* (LOA) SN: eLA201500088201 (LOA-V08-2018-00000446) dated October 10, 2018,[5] authorizing Revenue Officer (RO) Airene Espanto and Group Supervisor Ricaredo Balderas of Revenue Region No. 008 – Makati City to examine petitioner's books of accounts and other accounting records for VAT for the period January 1, 2018 to June 30, 2018.

On June 18, 2019, petitioner received the *Notice for Informal Conference* (NIC) dated June 7, 2019, with attached *Summary of Findings* and *Details of Discrepancy*.[6]

On July 17, 2019, petitioner submitted documents to reconcile the BIR's assessment for deficiency VAT as contained in the NIC.[7]

Thereafter, on March 11, 2020, petitioner received the *Preliminary Assessment Notice* (PAN) dated March 10, 2020 with attached *Details of Discrepancies* from the respondent,[8] finding it liable for deficiency VAT amounting to ₱6,089,434.47, inclusive of interest, for the 1st semester of the taxable year 2018, computed as follows:

Gross sales/receipts subject to VAT per returns			₱ 1,263,036.17
Add: Adjustments			
Undeclared Collections not subjected to VAT (Schedule 1)			5,550,088.17
Gross sales/receipts subject to VAT per investigation			6,813,124.34
Output Tax Due			₱ 817,574.92
Less: Input Tax Credits			
Input tax current period	₱14,539,652.25		
Input Tax Carry Over	58,892,629.70	73,432,281.95	
Less: Adjustments			
Disallowed input tax from local purchases (Schedule 2)	4,387,462.01		
Input Tax Carry Over to Succeeding period	73,280,717.61	77,668,179.62	(4,235,897.67)
VAT Due			₱ 5,053,472.59
Less: Payments			-

[5] BIR Records, Exhibits "P-1" and "R-1", p. 1.
[6] *Id.*, Exhibits "P-2" and "R-5", pp. 134 to 140.
[7] Docket, Par. 7, *Petition for Review With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*, vis-à-vis par. 4, *Answer (With Special and Affirmative Defenses With Grounds to Dismiss for Lack of Jurisdiction)*, pp. 8 and 176, respectively.
[8] BIR Records, Exhibits "P-3" and "R-8", pp. 309 to 313.

Deficiency VAT	₱ 5,053,472.59
Add: Interest (26 July 2018 to 31 March 2020)	1,035,961.88
TOTAL AMOUNT STILL DUE	**₱6,089,434.47**

On July 14, 2020, respondent issued a *Formal Letter of Demand* (FLD) with *Details of Discrepancies*,[9] with *Assessment Notice* No. VT-ELA88201-18-20-0065,[10] signed by Regional Director Glen A. Geraldino of Revenue Region No. 8B – South NCR, finding petitioner liable for VAT in the amount of ₱6,301,195.74, inclusive of interest, for the 1st semester of the taxable year 2018, computed as follows:

Gross sales/receipts subject to VAT per returns			₱ 1,263,036.17
Add: Adjustment			
Undeclared Collections not subjected to VAT (Schedule 1)			5,550,088.17
Gross sales/receipts subject to VAT per investigation			₱ 6,813,124.34
Output Tax Due			₱ 817,574.92
Less: Input Tax Credits			
Input tax current period	₱14,539,652.25		
Input Tax Carry Over	58,892,629.70	₱73,432,281.95	
Less: Adjustments			
Disallowed input tax from local purchases (Schedule 2)	₱ 4,387,462.01		
Input Tax Carry Over to Succeeding period	73,280,717.61	77,668,179.62	(4,235,897.67)
VAT Due			₱ 5,053,472.59
Less: Payments			-
Deficiency VAT			₱ 5,053,472.59
Add: Interest (26 July 2018 to 14 August 2020)			1,247,723.15
TOTAL AMOUNT STILL DUE			**₱6,301,195.74**

Thereafter, the BIR issued the questioned WDL dated August 26, 2021, and the same was constructively served to the petitioner on September 30, 2021.[11]

Petitioner filed its *Petition for Review With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction* on November 2, 2021.[12] The case was initially raffled to this Court's First Division.

Petitioner's *Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary* was initially set for

[9] BIR Records, Exhibit "R-9", pp. 318 to 320.
[10] *Id.*, Exhibit "R-10", p. 321.
[11] *Id.*, Exhibits "P-4" and "R-12", p. 329.
[12] Docket, pp. 6 to 32.

hearing on January 20, 2022,[13] but was reset to February 15, 2022,[14] and later reset to, and held on, March 10, 2022.[15] Relative thereto, petitioner presented its witness, Mr. Michael Angelo E. Alberto, its Accounting Officer, who testified on direct examination by way of a Judicial Affidavit.[16]

During the March 10, 2022 hearing, the Court likewise directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on April 19, 2022 at 10:00 a.m., pursuant to A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals).[17] However, the PMC-CTA later issued the *No Agreement To Mediate* dated April 19, 2022,[18] stating that the parties decided not to have their case mediated.

Petitioner's *Formal Offer of Evidence* was filed on March 25, 2022,[19] to which respondent posted his *Comment (To Petitioner's Formal Offer of Evidence dated March 25, 2022)* on April 1, 2022.[20] In the Resolution dated May 24, 2022,[21] the Court admitted all of petitioner's offered exhibits, and granted petitioner's *Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary*, treating the same as a *Motion for Suspension of Collection of Taxes*, subject to the posting of a cash or surety bond equivalent to the amount claimed.

Considering that petitioner failed to post a cash or surety bond as directed in the Resolution dated May 24, 2022,[22] the Court, in the Resolution dated July 5, 2022,[23] withdrew and set aside the granting of petitioner's *Motion for Suspension of Collection of Taxes* under the Resolution dated May 24, 2022.

Petitioner then filed a *Motion for Partial Reconsideration (of the Honorable Court's Order dated 24 May 2022)* on June 24,

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[13] Docket, Notice of Hearing dated December 13, 2021, p. 61.
[14] *Id.*, Notice of Resetting dated February 3, 2022, p. 62.
[15] *Id.*, Minutes of the hearing held on, and Orders dated, February 15, 2022 and March 10, 2022, pp. 64 to 66 and 94 to 95-A, respectively.
[16] *Id.*, Exhibit "P-6", Docket, pp. 52 to 57; Minutes of hearing held on, and Order dated, March 10, 2022, pp. 94 to 95-A.
[17] *Id.*, Minutes of hearing held on, and Order dated, March 10, 2022, pp. 94 to 95-A.
[18] *Id.*, p. 192.
[19] *Id.*, pp. 96 to 99.
[20] *Id.*, pp. 126 to 130.
[21] *Id.*, pp. 198 to 206.
[22] *Id.*, Records Verification dated June 21, 2022 issued by this Court's Judicial Records Division, p. 207.
[23] *Id.*, pp. 216 to 218.

2022,[24] while respondent failed to file comment thereto.[25] In the Resolution dated October 3, 2022,[26] the Court denied petitioner's *Motion* on the ground of mootness.

On April 13, 2022, respondent posted his *Motion to Admit Answer with Manifestation*,[27] while petitioner failed to file comment thereto.[28] In the Resolution dated July 5, 2022,[29] the Court granted the *Motion* and admitted the attached *Answer (With Special and Affirmative Defenses With Grounds to Dismiss for Lack of Jurisdiction)*,[30] interposing the following main special and affirmative defenses, to wit:

1. Petitioner did not notify the BIR of its change of address or updated its office address. Thus, the FAN was served to its old address. Consequently, the service of FAN was valid, and it became final and executory through petitioner's fault;

2. The FAN was already final, executory and demandable in this case. Consequently, this Honorable Court has no jurisdiction to take cognizance of this case;

3. By filing this Petition for Review without filing administrative protest against the WDL, petitioner violated the doctrine of exhaustion of administrative remedies; and

4. WDL is not appealable to this Honorable Court.

Respondent transmitted the *BIR Records* of the present case on July 4, 2022, consisting of 440 pages in one (1) folder.[31]

The Pre-Trial Conference was initially set on September 22, 2022,[32] but upon petitioner's *Urgent Motion to Reset Hearing*

[24] Docket, pp. 208 to 211.
[25] *Id.*, Records Verification dated August 25, 2022 issued by this Court's Judicial Records Division, p. 233.
[26] *Id.*, pp. 249 to 250.
[27] *Id.*, pp. 164 to 171.
[28] *Id.*, Records Verification dated June 21, 2022 issued by this Court's Judicial Records Division, Docket, p. 207. However, petitioner posted a *Comment (on the Respondent's Motion to Admit Answer dated 11 April 2022)* on May 24, 2022 but was only received by the Court on July 11, 2022, pp. 220 to 224; Docket, Having already granted respondent's *Motion* on July 5, 2022, the Court merely noted petitioner's *Comment* in the Resolution dated August 18, 2022, pp. 231 to 232.
[29] *Id.*, pp. 216 to 218.
[30] *Id.*, pp. 175 to 184.
[31] *Id.*, Transmittal Letter, p. 214.
[32] Resolution dated August 18, 2022, Docket, pp. 231 to 232.

filed on September 8, 2022,[33] was reset to, and held on, November 10, 2022.[34] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on November 3, 2022,[35] while *Respondent's Pre-Trial Brief with Manifestation* was submitted on November 4, 2022.[36]

In the Resolution dated January 6, 2023,[37] for failure of the parties to file their *Joint Stipulation of Facts and Issues*, the Court held that the parties' right to enter into admissions and stipulations is deemed waived, and that the Pre-Trial is terminated. The Pre-Trial Order dated February 10, 2023 was then issued.[38]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimony of Mr. Michael Angelo E. Alberto,[39] its Accounting Officer.

The *Formal Offer of Documentary Evidence (For the Petitioner)* was filed on March 21, 2023,[40] to which respondent filed his *Comment (To Petitioner's Formal Offer of Documentary Evidence)* on April 4, 2023.[41] In the Resolution dated May 26, 2023,[42] the Court admitted all of petitioner's offered exhibits.

In the Notice of Resolution dated May 31, 2023,[43] the present case was transferred to the Third Division of this Court.

For his part, respondent offered the testimony of RO Airene R. Espanto.[44]

Respondent's Formal Offer of Evidence (With Attached Original Duplicate Copy of Exhibit "R-16") was filed on July 31,

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[33] Docket, pp. 234 to 236.
[34] *Id.*, Resolution dated September 14, 2022, p. 246; Notice of Pre-Trial Conference dated October 6, 2022, Docket, pp. 251 to 253; Docket, Minutes of hearing held on, and Order dated, November 10, 2022, pp. 273 to 273-B and to 274 to 276, respectively.
[35] *Id.*, pp. 254 to 259.
[36] *Id.*, pp. 260 to 265.
[37] *Id.*, p. 319.
[38] *Id.*, pp. 324 to 336.
[39] *Id.*, Exhibit "P-7", Docket, pp. 283 to 288; Minutes of hearing held on, and Order dated, March 9, 2023, pp. 337 to 338-A.
[40] *Id.*, pp. 340 to 342.
[41] *Id.*, pp. 368 to 374.
[42] *Id.*, pp. 379 to 380.
[43] *Id.*, p. 381.
[44] *Id.*, Exhibit "R-17", pp. 294 to 313; Docket, Minutes of hearing held on, and Order, dated July 19, 2023, pp. 384 to 386. am

2023,[45] while *Petitioner's Comment on Respondent's Formal Offer of Evidence* was submitted on August 11, 2023.[46] In the Resolution dated October 13, 2023,[47] the Court admitted all of respondent's offered exhibits.

Petitioner's Memorandum was filed on November 14, 2023.[48]

Thereafter, respondent filed a *Motion to Admit Respondent's Memorandum* on November 28, 2023,[49] with attached *Respondent's Memorandum*,[50] while *Petitioner's Comment/Opposition on Respondent's Motion to Admit Memorandum* was submitted on December 13, 2023.[51] In the Resolution dated January 31, 2024,[52] the Court granted respondent's *Motion* and admitted the attached *Respondent's Memorandum.*

The present case was submitted for decision on January 31, 2024.[53]

ISSUE

The parties adopted the following issues for this Court's resolution:

> "1. Whether or not petitioner is liable for tax deficiency of Value Added Tax amounting to Six Million Three Hundred One Thousand and One Hundred and Ninety-Five Pesos and Seventy-Four Centavos (Php6,301,195.74), inclusive of interest and increments for taxable period covering January to June 2018; and,

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[45] Docket, pp. 390 to 394.
[46] *Id.*, pp. 404 to 405.
[47] *Id.*, pp. 420 to 423.
[48] *Id.*, pp. 424 to 435.
[49] *Id.*, pp. 439 to 445.
[50] *Id.*, pp. 448 to 454.
[51] *Id.*, pp. 457 to 459.
[52] *Id.*, pp. 463 to 465.
[53] *Id.*

> 2. Whether or not there is a valid issuance of Warrant of Distraint and/or Levy against petitioner."[54]

Petitioner's Arguments

Petitioner argues that it is not liable for deficiency VAT as the assessment was null and void, hence, bears no valid fruit; and that the issuance of WDL against it is invalid.

Respondent's Arguments

Respondent contends that considering that the petitioner failed to receive the FLD dated July 14, 2020, the WDL dated August 26, 2021 constructively served to the petitioner and later on received by the petitioner is the final assessment notice (FAN) that is appealable to the BIR and this Court; that petitioner did not notify the BIR of the former's change of address or updated its office address with the BIR, thus, the FAN was served to petitioner's old address; that for the undeclared collections not subject to VAT, petitioner is liable for VAT amounting to ₱5,550,088.17; and that petitioner has disallowed input tax amounting to ₱4,387,462.10.

RULING OF THE COURT

The present *Petition for Review* is meritorious.

The Court has jurisdiction over the present petition.

Respondent argues that petitioner's address up to the issuance of the FAN was at 344 South Superhway, Sunvalley, Parañaque City and registered with Revenue District Office (RDO) No. 52 - Parañaque. Hence, the service of the FAN to its registered address at 344 South Superhway, Sunvalley, Parañaque City is valid. Based on records, on January 5, 2021, petitioner updated its BIR registration to RDO 50 - South

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[54] Docket, Issue/s to be Tried or Resolved, Pre-Trial Order dated February 10, 2023, p. 330; Docket, Minutes of hearing held on, and Order dated, November 10, 2022, pp. 273 to 273-B and to 274 to 276, respectively.

Makati and registered address at 20th Floor, Lepanto Bldg. Paseo de Roxas, Bel-Air, Makati City.[55]

Respondent points out that the FAN in this case was issued, prior to change of address of the petitioner, on July 14, 2020, and the same was served by mail at taxpayer's registered address at that time at 344 South Superhighway, Sunvalley, Parañaque. Thus, applying Section 11 of Revenue Regulations (RR) No. 12-85, any communication notice that was sent to petitioner's former legal residence or business address as appearing in its tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.[56]

Hence, respondent contends that considering that the FAN was validly served to petitioner pursuant to Section 11 of RR No. 12-85 and petitioner failed to file a protest or request for reinvestigation/reconsideration, then, the FAN was already final, executory and demandable, and this Court has no jurisdiction to take cognizance of this instant *Petition for Review.*[57]

Respondent also argues that considering that the petitioner failed to receive the FLD dated July 14, 2020, the WDL dated August 26, 2021 should serve as the assessment notice that is valid and appealable with the BIR and Court of Tax Appeals in this case.[58] As such, petitioner failed to submit any evidence of any effort on its part to contest the WDL before the Office of the Collection Division of Revenue Region R8-Makati. On the contrary, instead of protesting at the administrative level, after the petitioner received the WDL, petitioner filed this instant *petition.*[59]

The Court disagrees with respondent.

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[55] Docket, Par. 10, *Respondent's Memorandum*, p. 450.
[56] *Id.*, Pars. 11 and 13, *Respondent's Memorandum*, pp. 450 to 451.
[57] *Id.*, Par. 12, *Answer (With Special and Affirmative Defenses With Grounds to Dismiss for Lack of Jurisdiction)*, p. 178.
[58] *Id.*, Par. 19, *Respondent's Memorandum*, p. 452.
[59] *Id.*, Par. 24, *Answer (With Special and Affirmative Defenses With Grounds to Dismiss for Lack of Jurisdiction)*, p. 182. *an*

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[60] as amended by RA No. 9282,[61] state as follows:

> "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;**" *(Emphases added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." *(Emphases added)*

The Supreme Court, in *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[62] interpreted the above-quoted provisions in this wise, to wit:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. vs. Court of Appeals*,[63] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide 'other matters' related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over 'other matters,' it presupposes that the tax assessment has not become final and unappealable.
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> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by

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[60] AN ACT CREATING THE COURT OF TAX APPEALS.
[61] 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.
[62] G.R. No. 169225, November 17, 2010.
[63] 386 Phil. 661 (2000).

> Section 7 of Republic Act No. 1125, as amended, and the term 'other matters' referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
>
> xxx xxx xxx
>
> Plainly, the assailed CTA *En Banc* Decision, was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term 'other matters' can be supported or even deduced. What is rather clearly apparent, however, is that the term 'other matters' is limited only by the qualifying phrase that follows it.
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> Thus, **on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is <u>not limited</u> to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**
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> xxx xxx xxx
>
> 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 <u>separate and independent of each other</u>.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an 'other matter' must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
>
> 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.**" *(Emphases and underscoring added)*

Based on the afore-quoted provisions and jurisprudential pronouncements, 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 1997 National Internal Revenue Code (NIRC), as amended, or related laws administered by the BIR.[64] It gives this Court the jurisdiction to determine if the WDL issued by the BIR is valid.[65] 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.

In the present case, apart from the subject tax assessment, petitioner assails the validity of the WDL dated August 26, 2021 issued by respondent. It should be noted that the WDL constitutes an act of respondent on "other matters" arising under the 1997 NIRC, as amended, which, pursuant to *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*,[66] may be the subject of an appropriate appeal before this Court.[67]

Correspondingly, the reckoning of the thirty (30)-day reglementary period under Section 11 of RA No. 1125, as amended by RA No. 9282, is based on petitioner's receipt of the WDL dated August 26, 2021 on September 30 2021.[68] Hence, counting thirty (30) days from September 30, 2021, petitioner had until October 30, 2021 to file its appeal to this Court. However, considering that October 30, 2021 fell on a Saturday, October 31, 2021 fell on a Sunday, and November 1, 2021 is a holiday, petitioner had until the next working day—November 2, 2021, to file the judicial claim. Therefore, the filing of the present *Petition for Review* on November 2, 2021[69] was timely made, and this Court can take cognizance of this case.

While respondent claims that the assailed assessment has attained finality due to petitioner's failure to file an administrative protest to the FAN, it should be pointed out that petitioner denies having ever received any FLD/FAN.[70] Thus, if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee as ruled in the case of *Commissioner of Internal*

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[64] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[65] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[66] G.R. No. 255473, February 13, 2023.
[67] Refer to *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R Nos. 201398-99 and 201418-19, October 3, 2018.
[68] BIR Records, Exhibits "P-4" and "R-12", p. 329; Docket, Exhibit "P-7" (Q&A No. 5), p. 285; Docket, Exhibit "R-17" (Q&A No. 78), p. 310.
[69] Docket, pp. 6 to 32.
[70] *Id.*, Exhibit "P-7" (Q&A Nos. 12 to 15), p. 286.

Revenue vs. GJM Philippines Manufacturing, Inc. (*GJM Philippines* case), to wit:[71]

> "**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved.** Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis and underscoring added)*

However, respondent offered no proof of such service, as will be discussed momentarily.

Such being the case, the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that no assessment was issued.[72] Thus, the subject tax assessment could not have attained finality so as to deprive this Court of jurisdiction to entertain the present appeal.

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[71] G.R. No. 202695, February 29, 2016.
[72] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018.

Respondent failed to prove that the FLD/FAN was properly served to petitioner, thereby depriving the latter of its right to due process.

Section 228 of the 1997 NIRC, as amended, mandates the following, *viz.*:

> "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**: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **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.
>
> xxx xxx xxx." *(Emphases added)*

Based on the foregoing provisions, part of the due process requirements in the issuance of tax assessments is that the concerned taxpayer be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the said assessment.

The above law is implemented under Section 3.1.4 of RR No. 12-99,[73] as amended by RR Nos. 18-2013[74] and 7-2018,[75] which requires that a FLD/FAN should be issued to a taxpayer, *viz.*:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4[76] *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void** (see illustration in ANNEX 'B' hereof)." *(Emphasis added)*

According to respondent, the FLD/FAN was sent to petitioner *via* private courier, *i.e.*, LBC Express, Inc., "because personal service was not practicable at that time because of the COVID-19 Pandemic."[77]

Relative thereto, Section 3.1.7 of the same RR reads, in part, as follows:

> 3.1.7[78] ***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:**
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he

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[73] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

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

[75] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[76] As renumbered pursuant to Section 2 of RR No. 7-2018.

[77] Docket, Exhibit "R-17" (Q&A No. 44), p. 304.

[78] As renumbered pursuant to Section 2 of RR No. 7-2018. *an*

> may be found. A *known* address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> **In case personal service is not practicable, the notice shall be served by substituted service or by mail.**
>
> xxx xxx xxx
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. **A copy of the notice may also be sent through reputable professional courier service.** If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the** person/barangay official/**professional courier service company who received the same and such other relevant information.** The registry receipt issued by the post office or **the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**
>
> xxx xxx xxx." *(Emphases added)*

Based on the foregoing provisions, one of the modes of service of the FLD/FAN is sending the same through a reputable professional courier service. In such case (as in other cases), the server shall accomplish the bottom portion of the same notice. The server shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the professional courier service company who received the same and such other relevant information. Moreover, the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Likewise, an assessment must contain not only a computation of tax liabilities, but also a demand for payment within the prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine its available remedies thereon, **due process requires that it must be <u>served on and received</u> by the taxpayer**.[79]

The ruling in the *GJM Philippines* case[80] is instructive that if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved.

In this case, petitioner directly denies receipt of the FLD/FAN,[81] hence, the burden of proving the *actual* receipt of the same lies with respondent.

To prove that the FLD/FAN was served to petitioner, *via* private courier, respondent merely presented LBC Receipt No. 1268 7940 7726.[82]

However, aside from the official receipt issued by the professional courier company, Section 3.1.7 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, requires that *"The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information."*

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[79] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.
[80] *Supra*, Note 71.
[81] Docket, Exhibit "P-7" (Q&A Nos. 12 to 15), p. 286.
[82] BIR Records, Exhibit "R-9-b", in between pages 317 and 318. *am*

In this case, the bottom portion of the FAN has an *"Acknowledgement of Receipt"* portion, but was not accomplished.[83] Moreover, the aforementioned written report under oath setting forth the manner, place and date of service, the name of professional courier service company who received the same and such other relevant information was not presented in evidence.

Furthermore, it is noteworthy that while the official receipt (OR) of the professional courier company, *i.e.*, LBC Express, Inc., was attached to the case docket, the same does not contain sufficiently identifiable details of the transaction, as likewise required under the aforequoted provisions of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018. More particularly, the said OR does not specifically indicate what is being sent to petitioner, for it merely states "Said to Contain DOC ONL".[84] To the Court's mind, the general reference to "DOC" may mean any document, other than the subject FLD/FAN.

Relative to the said LBC Receipt, RO Airene R. Espanto merely testified in her Judicial Affidavit,[85] as follows:

> "44. Q: What happened thereafter, if any?
>
> A: Petitioner failed to file legal protest against the PAN. Consequently, BIR issued Assessment Notice VT-ELA88201-18-20-0065, Formal Letter of Demand (FLD) and Details of Discrepancies, all dated July 14, 2020 to the petitioner via private courier, as shown by LBC Receipt No. 1268 7940 7726, at petitioner's registered address at 334 South Superhway, Sunvalley, Parñaque City because personal service was not practicable at that time because of the Covid-19 Pandemic."

During her cross-examination and clarificatory questions posed by the Court, the uncertainty in the sending of the FLD/FAN was even highlighted as RO Espanto clarified that she was not the one who actually mailed the FLD/FAN and has no personal knowledge of the what document was actually mailed to petitioner, *viz.*:

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[83] BIR Records, Exhibit "R-10", p. 321.
[84] Exhibit "R-9-b", BIR Records, in between pages 317 and 318.
[85] Exhibit "R-17" (Q&A No. 44), Docket, p. 304.

"Atty. Dadula:

xxx xxx xxx

Witness:

xxx xxx xxx

Q: However with respect to the FLD on Question No. 44, you responded to the question that since the petitioner failed to file a legal protest against the PAN, your office have issued FLD with details of discrepancies all dated July 14, 2020, correct?

A: Yes.

Q: And you said that it was sent through LBC private courier because of the COVID pandemic you said, is that correct?

A: Yes. And yung Makati po kase is nahati na sya so, na-transfer ako....

Q: Wait, I am not asking that. I'm just asking about the mailing of the FLD with notice of discrepancies, were you the one who made the mailing?

A: No, Sir.

Q: And so you don't even know what documents were placed inside the envelope?

A: Yes, sir.

Atty. Dadula:

You don't have personal knowledge of that?

Witness:

Yes, attorney.

Q: You did not know whether the contents of the envelope were FLD and Notice of discrepancies, correct?

A: Yes, sir.

Q: And yet that FLD and notice of discrepancies were served to the Parañaque office, correct? Were mailed to the Parañaque office?

A: Yes.

Q: And not in Makati office?

A: Yes.

xxx xxx xxx

Atty. Dadula:

And you attached to your judicial affidavit LBC receipt number 128-7940-7726 as part of your exhibits, correct?

Witness:

Yes.

Q: But the LBC receipt does not mention on what documents were included in the mail, correct? It is not found in the receipt, correct?

A: Yes.

xxx xxx xxx

JUSTICE MANAHAN:

Now, why is that the final assessment- the formal letter of demand together with the details of discrepancy mailed to the old address which as you said earlier has already been closed and you were able to serve it to the new address in Makati?

A: Since I was transferred in Makati so I was...

JUSTICE MANAHAN:

So you had no participation in the sending?

Witness:

Yes, Your Honor.

JUSTICE MANAHAN:

In the release or the mailing of the FLD?

A: Yes, Your Honor.

xxx xxx xxx

JUSTICE MANAHAN:

In the last cross examination question of Atty. Dadula he asked you to confirm your answer to Question 44, actually, in your answer to question 44 in addition to the FLD and the details, there was an assessment notice

> that was also attached to the FLD And yet you said there was no assessment notice?

Witness:

> Since I was not the one who mailed the letter notice so, I was not able to check if there was the assessment.

JUSTICE MANAHAN:

> But your answer stated that there was assessment notice VT-E and A88201-18-20 etcetera, can you kindly take a look at your judicial affidavit, Item 44 please, because that was the point being raised by Atty. Dadula that there was no assessment notice together with the FLD and the details of discrepancy? Have you seen the assessment notice or have you not seen that assessment notice?

A: I have not seen the assessment notice." [86]

Clearly, from the foregoing, respondent miserably failed to clearly and satisfactorily prove the release, mailing, or sending of the FLD/FAN to petitioner.

In sum, considering that respondent was unable to present substantial evidence that the subject FLD/FAN was properly served on, and received by petitioner or by its authorized representative/s, there is no valid assessment to speak of in this case. Relative thereto, it must be emphasized that the failure of respondent to prove receipt of the assessment by petitioner would necessarily lead to the conclusion that no assessment was issued.[87]

To stress, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[88] Furthermore, a void assessment bears no valid fruit.[89]

Consequently, in view of the violation of petitioner's right to due process provided under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, the subject FLD/FAN is void, and petitioner

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[86] Transcript of Stenographic Notes at the hearing held on July 19, 2023, pp. 15 to 21.
[87] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018.
[88] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[89] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

cannot be held liable thereunder. Pertinently, the subject deficiency tax assessment bear no valid fruit,[90] and respondent's WDL dated August 26, 2021 must not be given any effect.

As a corollary, it must be emphasized that tax collection must be **preceded by a valid assessment** to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence.[91] Considering that the subject FLD/FAN is void, the said WDL dated August 26, 2021 cannot be said to have been preceded by valid assessment, and thus, cannot be validly enforced against petitioner.

Finding that the subject tax assessment invalid, it becomes unnecessary to address the other issues and matters raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent's *Warrant of Distraint and/or Levy* dated August 26, 2021 is **LIFTED** and **SET ASIDE**.

Moreover, for being void, the deficiency VAT assessment issued against petitioner, in the total amount of ₱6,301,195.74, inclusive of interest, for the period January 1, 2018 to June 30, 2018, is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

HENRY S. ANGELES
Associate Justice

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[90] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.
[91] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice