

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**LOADSTAR SHIPPING CO.
INC. represented herein by
TEODORO G. BERNARDINO,**

Petitioner,

CTA EB NO. 2499

(CTA Case No. 9902)

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

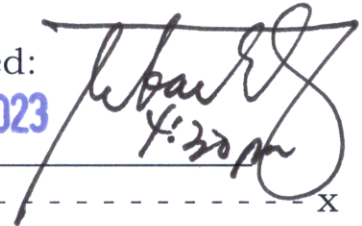
-versus-

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

JUL 04 2023



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D E C I S I O N

MANAHAN, J.:

This involves a Petition for Review¹ filed by Loadstar Shipping Co. Inc., represented by Teodoro G. Bernardino, seeking the reversal of the Decision and Resolution, dated December 7, 2020 and June 11, 2021, respectively, of the Court of Tax Appeals (CTA) 2nd Division. Petitioner prays that the alleged deficiency income tax and expanded withholding tax in the total amount of Php37,850,407.66 be declared null and void.

FACTS

The CTA 2nd Division recounts the facts, as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws. Respondent, on the other hand, is the duly appointed Commissioner of Internal

¹ EB Docket, pp. 7-45. *cm*

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Revenue (respondent/CIR) empowered to perform the duties of the said office; including, among others, the authority to examine books of accounts of taxpayers and determine the correct amount of taxes as well as decide on disputed assessments arising under the National Internal Revenue Code (NIRC) of 1997, as amended, and other laws administered by the Bureau of Internal Revenue (BIR).

xxx

On 11 September 2015, respondent issued Letter of Authority (LOA) No. eLA201200043194/LOA-034-2015-00000130, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes except value-added tax (VAT), including documentary stamp tax (DST) and other taxes for TY 2014.


Subsequently, respondent issued a First Request for Presentation of Records. Petitioner then responded to the said request and submitted documents with the cover letter dated 29 October 2015 through its authorized representative, Cecil[i]a R. Absalon (Absalon).

Still, respondent issued a *Subpoena Duces Tecum* (SDT) with SDT No. RR6-2017-0051. Through its counsel, petitioner replied to the same in a letter dated 03 March 2017. Petitioner again sent a letter dated 18 March 2017 addressing the SDT through its authorized representative, Jhoana G. Gallos (Gallos).

Thereafter, petitioner received a Joint Complaint-Affidavit. In reply, the responsible corporate officers submitted their Counter-Affidavit alleging that they did not receive the SDT and that the same was left with the telephone operator, Rianne Gustilo (Gustilo), who was not authorized to receive said notices.

Unyielding, respondent issued the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies on 20 October 2017, assessing petitioner for deficiency IT and EWT for P37,613,834.06 and P72,286.20, respectively.

Later, respondent issued the Formal Letter of Demand (FLD) with attached Details of Discrepancies and Assessment Notices, all dated 28 November 2017, reiterating its assessment in the PAN (with adjustments on interests).

Respondent issued the Preliminary Collection Letter (PCL) on 04 April 2018 which petitioner received on 10 April 2018. Fifteen (15) days after, he issued the Final Notice Before Seizure (FNBS). 

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Petitioner's President, Teodoro G. Bernardino (Bernardino), later claimed to have come across the copy of the WDL only on 05 July 2018.²

On August 6, 2018, petitioner filed its Petition for Review (with Motion for Suspension of Collection of Tax). After trial, the CTA 2nd Division rendered its Decision, the dispositive portion of which states:

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner Loadstar Shipping Co., Inc. is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.³

Petitioner's Motion for Reconsideration was denied in the Resolution dated June 11, 2021.⁴

On October 5, 2021, the Court received petitioner's Petition for Review, which was filed through registered mail on July 22, 2021. On June 13, 2022, respondent filed his Comment/Opposition (re: Petition for Review dated 21 July 2021).⁵

Hence, the case was submitted for decision on July 4, 2022.⁶

ISSUES

Petitioner interposes the following for the Court's consideration:


- I. The Honorable Court has jurisdiction over the petition since the same was filed by the petitioner within the thirty (30)-day period provided under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended.
- II. Respondent failed to follow the procedures laid down in Section 228 of the 1997 NIRC, as amended, and Revenue Regulations (RR) No. 12-99 and other

² EB Docket, Decision dated December 7, 2020, pp. 48-49.

³ EB Docket, Decision dated December 7, 2020, p. 59.

⁴ EB Docket, pp. 62-64.

⁵ EB Docket, pp. 270-272.

⁶ EB Docket, pp. 274-275. 

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pertinent laws and regulations, making the assessments null and void for violation of petitioner's right to due process.

A. There is no Notice of Informal Conference (NIC) that was served to the petitioner.

B. Petitioner was not informed in writing of the law and the facts on which the assessments are made as the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) were not received by the duly authorized representative of petitioner.

III. Petitioner is not liable for the alleged deficiency income tax and withholding tax since:

A. The Warrant of Distraint and/or Levy were not received by a duly authorized officer of petitioner.

B. The period to collect the alleged deficiency taxes had already prescribed.⁷

Loadstar's arguments

Loadstar argues that the CTA 2nd Division had jurisdiction since the petition for review was filed within the 30-day period within which to appeal to the CTA, counted from its receipt of the WDL on July 5, 2018.

Loadstar also states that respondent failed to comply with the requirements under Section 228 of the 1997 NIRC, as amended, since no NIC was issued.

Loadstar then reiterates the lack of authority of its employee, telephone operator Rianne Gustilo, to receive documents on its behalf, and, that petitioner's right to due process was violated when the subject assessments/notices were not served on petitioner's authorized officer. Loadstar also argues that the assessments have prescribed.

⁷ EB Docket, Petition for Review, pp. 17-18. *am*

Commissioner of Internal Revenue's counter-arguments

The CIR states that the CTA 2nd Division correctly dismissed the original Petition for Review for lack of jurisdiction. Since petitioner failed to protest the Formal Letter of Demand and assessment notices (FLD/FAN), the same have already become final and executory.

The CIR also states that there is no improper service of the FLD, since the service of BIR's correspondences to petitioner's employees is sanctioned by RR No. 18-2013. The CIR also reiterates that the issuance of an NIC is not required during the subject assessment period in the instant case.

RULING OF THE COURT

The Petition for Review was timely filed.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),⁸ the Loadstar had fifteen (15) days from receipt of the assailed Resolution, within which to file a Petition for Review before the CTA *En Banc*.


Loadstar received the assailed Resolution dated June 11, 2021 on June 22, 2021. Counting fifteen (15) days therefrom, Loadstar had until July 7, 2021 within which to file a Petition for Review.

On July 7, 2021, Loadstar filed its *Motion for Extension To File Petition for Review*,⁹ praying for an additional fifteen (15) days, or until July 22, 2021 within which to file a Petition for Review. The extension was granted in the Minute Resolution dated July 9, 2021.¹⁰

⁸ Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx

(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

⁹ EB Docket, pp. 1-4.

¹⁰ EB Docket, p. 5. 

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On July 22, 2021, Loadstar posted its *Petition for Review*, hence, the same was timely filed.

The CTA 2nd Division has jurisdiction over the original Petition for Review under “other matters” arising under the 1997 NIRC, as amended.

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides the jurisdiction of the Court of Tax Appeals, 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; (*Underscoring supplied*)

Section 3(a)(1), Rule 4 of the RRCTA also provides:

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

(a) Exclusive original 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; (*underscoring supplied*)

In *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,¹¹ the Supreme Court ruled that the CTA has jurisdiction to determine the validity of a WDL under “other matters”, as follows:

¹¹ G.R. No. 202105, April 28, 2021, citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004. *cm*

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In *Philippine Journalists*, we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7(a)(2) of RA 9282 also covers "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480. (Underscoring supplied)

However, the taxpayer should have timely appealed the WDL to the CTA. Section 11 of RA No. 1125, as amended by RA No. 9282, provides the thirty (30)-day period to appeal to the CTA:

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, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx (Underscoring supplied)

In the instant case, records show that Loadstar received the WDL on July 5, 2018.¹² Petitioner alleges, and respondent admits, that the said WDL was received by the appropriate corporate officers on July 5, 2018, *to wit*:

Petition for Review (CTA Case No. 9902)

2. A copy of the said Warrant of Distraint and/or Levy, was received by the appropriate corporate officers on July 5, 2018, xxx¹³

CIR's Answer (CTA Case No. 9902)

¹² Division Docket, Vol. I, Exhibit "R-15", p. 214.

¹³ Division Docket, Vol. I, p. 10. *um*

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2. He admits the allegations in paragraphs 2, 3, 4, 5, 6, and 7 of the petition;¹⁴

It is undisputed that the WDL was received on July 5, 2018. Counting 30 days from July 5, 2018, petitioner had until August 4, 2018, which was a Saturday, within which to appeal. Thus, the original Petition for Review before the CTA 2nd Division was timely filed on the next working day, August 6, 2018. Based on the foregoing, the CTA 2nd Division should have assumed jurisdiction.

Nevertheless, the Petition for Review docketed as CTA Case No. 9902 should still be denied for lack of merit, as discussed below.

There was no violation of petitioner's right to due process; the assessments have become final and executory.

In determining whether a WDL was validly issued, the Court must determine the validity of the underlying assessments sought to be collected by the WDL, and whether respondent's right to collect the subject taxes has prescribed.

Upon review of the records and as found by the CTA 2nd Division, the following were received by petitioner:

1. LOA No. eLA201200043194/ LOA-034-2015-00000130¹⁵ dated September 11, 2015, received on September 14, 2015 by Rianne Gustilo;
2. First Request for Presentation of Records,¹⁶ received on September 22, 2015 by Rianne Gustilo;
3. *Subpoena Duces Tecum* No. RR6-2017-0051,¹⁷ dated February 14, 2017, received on March 2, 2017 by Rianne Gustilo;

¹⁴ Division Docket, Vol. I, p. 175.

¹⁵ Division Docket, Vol. II, Exhibit "P-9", p. 566.

¹⁶ Division Docket, Vol. II, Exhibit "P-10", p. 567.

¹⁷ Division Docket, Vol. I, Exhibit "R-7", p. 258 and Vol. II, Exhibit "P-12", p. 569. *du*

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4. PAN with Details of Discrepancies,¹⁸ dated October 20, 2017, received on October 27, 2017 by a certain “Lean” (with illegible last name);
5. FLD with Details of Discrepancies,¹⁹ dated November 28, 2017, received on November 29, 2017 by Rianne Gustilo, together with Assessment Notice²⁰;
6. Preliminary Collection Letter,²¹ dated April 4, 2018, received on April 10, 2018 by Rianne Gustilo; and
7. WDL,²² dated July 5, 2018, and received on July 5, 2018 by Rianne Gustilo.

Petitioner states that its employee Rianne Gustilo is not authorized to receive the foregoing documents on its behalf and that no NIC was served upon it, therefore, petitioner argues that its right to due process was violated.

We find petitioner’s argument bereft of merit. As found by the Court in Division, RR No. 18-2013 provides for the modes of service of the various BIR notices, to wit:

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:

(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 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.


(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

¹⁸ Division Docket, Vol. I, Exhibit “R-8”, pp. 259-261.

¹⁹ Division Docket, Vol. I, Exhibit “R-10”, pp. 297-299.

²⁰ Division Docket, Vol. I, Exhibit “R-9”, p. 296.

²¹ Division Docket, Vol. I, Exhibit “R-12”, p. 204.

²² Division Docket, Vol. I, Exhibit “R-15”, p. 214. 

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The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

xxx (*Boldfacing supplied*)

The Court also observes that petitioner did not object to the service of the LOA, First Request for Presentation of Records, and *Subpoena Duces Tecum* (SDT) upon the employee Rianne Gustilo at the earliest opportunity. As shown in petitioner's letter dated March 3, 2017, or the day after receipt of the SDT on March 2, 2017, there is no statement that the said Rianne Gustilo was not authorized to receive the SDT or any of the prior notices.²³ Instead, petitioner merely prayed for an extension to comply with the SDT. The same is true for petitioner's letter dated March 18, 2017.²⁴ In fact, the argument that petitioner's employee was not authorized to receive the said notices were raised only in the Counter Affidavit²⁵ dated July 5, 2017.

Based on the foregoing, the Court finds no defect in the service of the said notices upon petitioner.

As to the argument that no NIC was issued, the CTA 2nd Division correctly held that an NIC was not required during the subject assessment period. RR No. 18-2013²⁶ deleted the requirement for issuance of an NIC while RR No. 07-2018²⁷ subsequently reinstated the requirement for the NIC. Thus, an NIC was not required prior to the issuance of the PAN on October 20, 2017.

Hence, there was no violation of petitioner's right to due process in the issuance of the subject assessment.

²³ Division Docket, Vol. II, Exhibit "P-13", pp. 570-571.

²⁴ Division Docket, Vol. II, Exhibit "P-14", p. 572.

²⁵ Division Docket, Vol. II, Exhibit "P-16", pp. 585-590.

²⁶ Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

²⁷ 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, January 22, 2018. *am*

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As to the petitioner's argument on prescription, Section 203 of the 1997 NIRC, as amended, provides for the period to assess and collect taxes, as follows:

SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The instant case involves assessments for deficiency income tax and expanded withholding tax (EWT) for taxable year 2014.

For income tax for taxable year 2014, the last day to file the return is on April 15, 2015, and petitioner actually filed its income tax return (ITR) on April 15, 2015.²⁸ Thus, the last day to assess was on April 15, 2018. Considering that the FLD/FAN was issued on November 28, 2017,²⁹ the assessment for deficiency income tax has not prescribed.

With respect to the assessment for deficiency EWT, the manual filing of the EWT returns must be within ten (10) days after the end of each month for the months of January to November and on or before January 15 of the following year for the month of December, as provided by Section 2.58(A)(2)(a)³⁰ of RR No. 2-98,³¹ as amended by RR No. 17-2003.³²

²⁸ Division Docket, Vol. I, Exhibit "R-1", pp. 245-252.

²⁹ Division Docket, Vol. I, Exhibit "R-10", pp. 297-299.

³⁰ SEC. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) *Monthly return and payment of taxes withheld at source.* –

(1) xxx xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; xxx *Om*

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In the instant case, nothing in the records shows petitioner's dates of actual filing of its EWT returns, thus, applying the above-quoted provision, the period of limitation on respondent's right to assess EWT for taxable year 2014 is shown below:

Period covered	Last day prescribed by law to file the return	Last day to assess under Section 203 if the 1997 NIRC, as amended
January 2014	February 10, 2014	February 10, 2017
February 2014	March 10, 2014	March 10, 2017
March 2014	April 10, 2014	April 10, 2017
April 2014	May 10, 2014	May 10, 2017
May 2014	June 10, 2014	June 10, 2017
June 2014	July 10, 2014	July 10, 2017
July 2014	August 10, 2014	August 10, 2017
August 2014	September 10, 2014	September 10, 2017
September 2014	October 10, 2014	October 10, 2017
October 2014	November 10, 2014	November 10, 2017
November 2014	December 10, 2014	December 10, 2017
December 2014	January 15, 2014	January 15, 2018

From the foregoing, when the FLD/FAN was issued on November 28, 2017, respondent's right to assess petitioner for deficiency EWT for the months of January to October 2014 had already prescribed. Accordingly, only the assessment for deficiency EWT for the months of November and December 2014 was issued within the three-year prescriptive period allowed by law.

However, the Court finds that petitioner failed to establish clearly which portion of the said deficiency EWT pertain to the prescribed periods. In the absence of proof to the contrary, this Court is constrained to impute the entire deficiency EWT assessment to the unprescribed portion of taxable year 2014.

Thus, with the findings that there was no violation of petitioner's right to due process, that the assessments have not prescribed, and that petitioner failed to file a valid protest

³¹ Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as amended" Relative to the Withholding on Income Subject to Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

³² Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes. *an*

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to the FLD/FAN, the subject assessment for deficiency income tax and EWT has become final, executory, and demandable.

Respondent's right to collect the deficiency taxes has not prescribed.

Section 203 of the 1997 NIRC, as amended, quoted above, provides for the period to assess and collect taxes. In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,³³ the Supreme Court clarified that when the Bureau of Internal Revenue (BIR) issues the assessment within the three (3)-year period, it has another three (3) years, counted from the date the assessment notice had been released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding, as follows:

The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer. (*Underscoring supplied*)

To recall, the FLD/FAN in the instant case was issued on November 28, 2017. The subject WDL was received on July 5, 2018. Clearly, respondent's right to collect the subject deficiency taxes has not prescribed at the time of the issuance of the WDL.


All in all, the Court finds no reason to cancel and set aside the subject assessment and WDL.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

³³ G.R. No. 197515, July 2, 2014. *an*


The Decision dated December 7, 2020 and Resolution dated June 11, 2021 of the CTA 2nd Division dismissing the Petition for Review, docketed as CTA Case No. 9902, are affirmed, but for the reasons set forth in this Decision.

SO ORDERED.

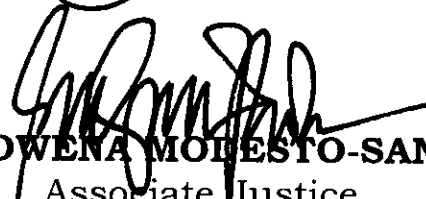

CATHERINE T. MANAHAN
Associate Justice

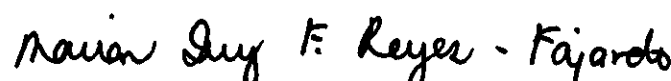
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice

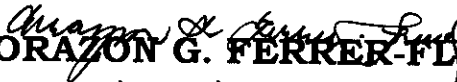

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


(With Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MOLESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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.


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

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represented herein by TEODORO
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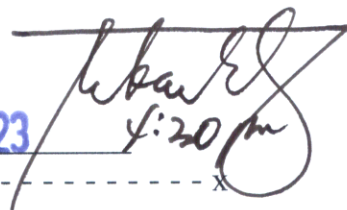
- versus -

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:
JUL 04 2023



x-----x

CONCURRING OPINION

BACORRO-VILLENA, J.:

In its 07 December 2020 Decision (**assailed Decision**), the Second Division held that it failed to acquire jurisdiction over petitioner Loadstar Shipping Co. Inc.'s (**petitioner's**) prior Petition for Review due to its failure to file a protest to the Formal Letter of Demand (**FLD**) and Assessment Notices (**ANs**), making the same already final, executory and demandable.

However, in view of the Supreme Court's subsequent promulgation of the case of *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.* (**QL Development**) in G.R. No. 258947 on 29 March 2022, I am constrained to agree that the Second Division had jurisdiction over the prior petition.

In *QL Development*, the Supreme Court, despite noting that the taxpayer therein failed to file a protest to the Final Assessment Notice



(FAN)/FLD, held that the Court's jurisdiction is not limited to cases of disputed assessments and refunds of internal revenue taxes but also on "other matters" arising under the National Internal Revenue Code (NIRC) of 1997, as amended, such as question on whether the right of respondent Commissioner of Internal Revenue (**respondent**) to collect has already prescribed, to wit:

...

On the merits of the case, the CIR attributes grave abuse of discretion to the CTA Division when it assumed jurisdiction over QLDI's Petition for Review. The CIR claims that QLDI's failure to file a valid protest to the FAN/FLD rendered the assessment against it already final, executory, and demandable. As such, the assessments are not subject to judicial scrutiny, as it is already beyond the CTA Division's jurisdiction.

The CIR's argument must fail in light of Section 7(a)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC[.]¹

...

In addition, the Supreme Court clarified in *QL Development* the meaning of assessment becoming final for failure to file a protest, that is, its validity or correctness may no longer be questioned on appeal, viz:

...

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.²

...

Nevertheless, for clarity, I propose the summation of the following rules, in line with the pronouncement in *QL Development* and other related jurisprudence:

1. Failure to file a protest to the assessment renders the same final, executory and demandable, meaning, its validity or correctness may no longer be questioned on appeal (but subject also to the pronouncement that a void assessment

¹ Citations omitted.

² Citation omitted and emphasis supplied.

bears no valid fruit³ and that the assessment becoming final, executory and demandable should be premised on the validity of the assessment⁴;

2. Despite the assessment becoming final, executory and demandable, this Court would still have jurisdiction over other matters arising under the NIRC of 1997, as amended, in relation to the tax subject of the said assessment, such as whether the *right to collect* the same has already prescribed; and,
3. In the event of a finding that there is no reason to invalidate the assessment or the BIR's collection efforts, the assessment items shall be upheld in its entirety (as its correctness may no longer be questioned).

At any rate, I concur with the conclusions reached by my esteemed colleague, Associate Justice Catherine T. Manahan, affirming the Second Division's findings that: (1) there was no violation of petitioner's right to due process in the service of the Bureau of Internal Revenue's (BIR's) notices to petitioner; and, (2) while deficiency Expanded Withholding Tax (EWT) assessments for the months of January to October 2014 have already prescribed, still, petitioner failed to clearly establish which portion of the said deficiency EWT pertain to prescribed periods thus the Court is constrained to impute the entire deficiency EWT assessment to the unprescribed portion of taxable year (TY) 2014.

In sum, I vote to **DENY** the instant Petition for Review for lack of merit.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

³ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010; and *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694, 27 January 2006.

⁴ *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, 24 August 2020.