

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

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA EB NO. 2626

(CTA Case No. 9451)

Present:

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

-versus-

**CITIPARKING MANAGEMENT
CORPORATION,**

Respondent.

Promulgated:
SEP 29 2023

11:40am

X-----X

D E C I S I O N

MANAHAN, J.:

This involves the Petition for Review¹ filed by the Commissioner of Internal Revenue (CIR) praying for the reversal of the Decision and Resolution, respectively dated July 23, 2021 and April 28, 2022, issued by the Court of Tax Appeals (CTA) 3rd Division. The CTA 3rd Division cancelled and set aside the Warrant of Distraint and/or Levy (WDL) issued against Citiparking Management Corporation (Citiparking) for taxable year 2007 because the CIR's right to collect the deficiency taxes for taxable year 2007 has prescribed.

FACTS

The CTA 3rd Division recounts the facts, as follows:

Petitioner [Citiparking] is a corporation duly organized and existing under Philippine laws.

¹ EB Docket, pp. 4-15. *am*

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Respondent [CIR] is the public officer authorized under the National Internal Revenue Code (NIRC) of 1997, as amended, to examine any taxpayer and to assess the correct amount of internal revenue tax.

On July 27, 2009, *Letter of Authority* (LOA) No. 00032885 was issued by Antonio F. Montemayor, Regional Director of Revenue Region 7, authorizing Revenue Officer (RO) Rehmar Mortiz under Group Supervisor (GS) Anna Kristel Dela Vega of the Assessment Division of Revenue Region 7, Quezon City to examine petitioner [Citiparking]'s books of accounts and other accounting records for all internal revenue taxes for 2007.

On August 12, 2010, a *Memorandum of Assignment* (MOA) was issued, referring the docket of the case relative to petitioner [Citiparking]'s 2007 internal revenue tax examination to RO Saladin B. Domato and GS Anna Kristel K. Dela Vega for the continuation of the audit investigation.


On November 23, 2010, respondent [CIR] through Assistant Regional Director Jonas Amora, issued the *Preliminary Assessment Notice* (PAN), with *Details of Discrepancies* assessing petitioner [Citiparking] for deficiency taxes for the TY 2007, detailed as follows:

| Tax Type | Amount |
|--|-----------------------|
| Income Tax | P 1,928,930.90 |
| Value Added Tax (VAT) | 528,272.22 |
| Expanded Withholding Tax (EWT) | 122,325.39 |
| Documentary Stamp Tax (DST) | 7,599.48 |
| Improperly Accumulated Earnings Tax (IAET) | 463,335.13 |
| TOTAL | P 3,050,463.12 |

On December 15, 2010, respondent [CIR] issued Assessment Notices and *Formal Letter of Demand* No. OA-043A-B0088-07 with *Details of Discrepancies* (FAN/FLD) for the alleged 2007 deficiency taxes, detailed as follows;

| Tax Type | Amount |
|--------------------|-----------------------|
| Income Tax | P 1,970,742.99 |
| VAT | 539,397.64 |
| EWT | 124,892.56 |
| DST | 6,718.56 |
| IAET | 456,420.38 |
| Compromise Penalty | 17,000.00 |
| TOTAL | P 3,115,172.13 |

In response to the FAN/FLD, petitioner [Citiparking] filed its *Protest* dated March 7, 2011, with the Regional Director, Revenue Region No. 7, BIR, Quezon City, requesting for the re-investigation of the assessments.

On November 2, 2011, OIC-Regional Director Jonas Amora issued a Decision denying petitioner [Citiparking]'s *Protest* for its failure to submit documents in support of its protest; and requesting the payment of petitioner 

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[Citiparking]'s tax liability under the FAN/FLD dated December 15, 2010.

On December 8, 2011, petitioner [Citiparking] through its Chairman/President, Ronaldo S. Salonga, filed a *Letter* before the CIR requesting for reconsideration of the Decision issued by OIC-Regional Director Jonas Amora dated November 2, 2011.

On March 30, 2016, CIR Kim Jacinto-Henares issued the *Final Decision* affirming the denial of petitioner [Citiparking]'s *Protest* to the FAN/FLD; and demanding the payment of deficiency taxes as indicated in the FAN/FLD in the total amount of P3,115,172.13.


Thereafter, respondent [CIR] through the Head of Arrears Management Team, Albert Joy Araño, issued the *Final Notice Before Seizure* (FNBS) against the petitioner [Citiparking] requesting the settlement of the deficiency income taxes in the total amount of P3,115,172.13.

On July 26, 2016, respondent [CIR] through the Chief of Collection Division, Alice S.A. Gonzales, issued the subject WDL No. RR7-2016-07-15-0596 in view of petitioner [Citiparking]'s alleged failure and refusal to pay the subject deficiency taxes for TY 2007. The said WDL was received by petitioner [Citiparking] on July 28, 2016.

Thereafter, on August 16, 2016, petitioner [Citiparking] filed the instant *Petition for Review*.

On September 16, 2016, the Court issued a Resolution, dismissing the instant *Petition for Review* for lack of jurisdiction. The Court ruled that the assessment has become final, executory and demandable for petitioner [Citiparking]'s failure to timely appeal to this Court the Decision dated November 2, 2011.

On October 26, 2016, petitioner [Citiparking] filed a *Motion for Reconsideration* praying for the reversal and setting aside of the Resolution dated September 16, 2016. Petitioner [Citiparking] argues that it timely filed the Request for Reconsideration of the Regional Director's decision to the CIR within the 30-day period, in accordance with Revenue Regulations No. 12-99, as amended by RR No. 18-2013. Further, petitioner [Citiparking] maintains that the issue on the validity of the assessment is separate and distinct from the issue of whether the right of respondent [CIR] to collect has prescribed; and that the issue of prescription is well within the jurisdiction of the Court to decide.

In the Resolution dated December 5, 2016, the Court granted Petitioner [Citiparking]'s *Motion for Reconsideration*; and held that it has jurisdiction over the instant case considering that the *Petition for Review* is not an appeal from 

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the inaction of the CIR on petitioner [Citiparking]'s protest nor an appeal of the Decision of the CIR denying petitioner [Citiparking]'s request for reconsideration, but a remedy afforded to petitioner [Citiparking] which the Court has jurisdiction under the "other matters" clause in Section 7(a)(1) of Republic Act No. 1125, as amended by RA No. 9282. xxx

xxx xxx xxx.²

After trial, the CTA 3rd Division rendered its Decision, dated July 23, 2021, with the following dispositive portion:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the WDL dated July 26, 2016 is hereby **CANCELLED** and **SET ASIDE** on the ground that respondent [CIR]'s right to collect the deficiency taxes for taxable year 2007 has prescribed.

Respondent [CIR] is hereby **ENJOINED** from proceeding with the collection of the assailed deficiency taxes assessed against petitioner [Citiparking] arising from Assessment/Demand No. OA-043A-B0088-07 for taxable year 2007 in the total amount of P3,115,172.13 as indicated in WDL No. RR7-2016-07-15-0596 dated July 26, 2016.

SO ORDERED.³

The reconsideration was also denied, as follows:

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.⁴

On June 13, 2022, the CIR filed its *Petition for Review* before the CTA *En Banc*, docketed as CTA EB No. 2626. Upon notice,⁵ Citiparking filed its *Comment on Petition for Review*⁶ on July 22, 2022.

² EB Docket, Division Decision dated July 23, 2021, pp. 17-20.

³ EB Docket, Division Decision dated July 23, 2021, p. 33.

⁴ EB Docket, Division Resolution dated April 28, 2022, p. 39.

⁵ EB Docket, Resolution dated July 11, 2022, pp. 45-46.

⁶ EB Docket, pp. 47-53. *Am*

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The case was referred to mediation,⁷ however, the parties opted not to have their case mediated.⁸ Thus, the case was submitted for decision on October 12, 2022.⁹

ISSUES

The CIR assigns the following errors:

- I. With all due respect, the Honorable Court erred in not dismissing the petition for review for lack of jurisdiction.

- II. With all due respect, the Honorable Court erred in ruling that the CIR's right to collect the deficiency taxes of Citiparking for taxable year 2007 has prescribed.¹⁰

CIR's arguments

The CIR states that the Citiparking failed to file a valid protest since it was filed only on March 7, 2011, and the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) became final, executory and demandable. Thus, the CTA 3rd Division had no jurisdiction to entertain the case.

The CIR also states that the period of collection of taxes has not prescribed in view of the request for reconsideration filed by Citiparking, which suspended the running of the prescriptive period.


Citiparking's arguments

Citiparking asserts that it is not questioning the CIR's final decision issued on March 30, 2016, rather, it is questioning the validity of the WDL dated July 26, 2016. This issue is covered under the CTA's jurisdiction under the phrase "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal

⁷ EB Docket, Resolution dated August 18, 2022, pp. 67-68.

⁸ EB Docket, No Agreement to Mediate, p. 69.

⁹ EB Docket, pp. 71-72.

¹⁰ EB Docket, Petition for Review, p. 8. 

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Revenue”, provided in Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.¹¹

Citiparking also states that the prescriptive period of the CIR’s right to collect was not suspended since no actual reinvestigation occurred. Thus, the period of collection has already prescribed.

Citiparking also states that the issues raised by the CIR have already been duly considered and passed upon by the Court.

RULING OF THE COURT

The Petition for Review is timely filed.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),¹² the CIR had fifteen (15) days from receipt of the assailed Resolution, within which to file his Petition for Review.

On May 12, 2022, the CIR received the Resolution dated April 28, 2022. The 15-day period from May 12, 2022 lapsed on May 27, 2022. On May 26, 2022, the CIR filed a *Motion for Extension of Time to File Petition for Review* praying for an additional 15 days, or until June 11, 2022, within which to file the petition for review.¹³


¹¹ 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

¹² 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.

¹³ EB Docket, pp. 1-2. 

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With the extension granted,¹⁴ the CIR timely filed his Petition for Review on June 13, 2022, the next working day considering that June 11, 2022 was a Saturday.

The FLD/FAN became final and executory when Citiparking failed to file a valid protest.

We agree with the CIR that Citiparking failed to file a valid protest.

It is undisputed that an FLD/FAN No. OA-043A-B008-07 was issued on **December 15, 2010**, demanding Citiparking to pay the deficiency taxes amounting to Php1,970,742.99 as income tax, Php539,397.64 as value-added tax (VAT), Php124,892.56 as expanded withholding tax (EWT), Php6,718.56 as documentary stamp tax (DST), and Php456,420.38 as improperly accumulated earnings tax (IAET).

Notably, there is nothing in the records which indicates the date when Citiparking received the FLD/FAN, although Citiparking does not dispute receipt of the said FLD/FAN.¹⁵ Citiparking's witness, Finance and Accounting Manager Fely Charito C. Sarmiento, testified:

Q8: Do you know when CMC received the FLD?

A8: No, sir. All I recall is there was a problem with regard to the handling of the notices of the BIR, particularly for this assessment, as the person-in-charge failed to immediately report this matter to the company. We explained this in a protest letter dated 7 March 2011 to the BIR.¹⁶


The abovementioned protest letter, dated March 7, 2011,¹⁷ likewise makes no mention of a date of receipt. It states:

This is in relation to the BIR Assessment Notice issued by your office to our client, Citiparking Management Corp. in relation to the tax investigation for the taxable year 2007.

¹⁴ EB Docket, p. 3.

¹⁵ See Exhibits "P-1" and "R-8", division docket, pp. 20-23 and 249-251, respectively.

¹⁶ Division docket, Judicial Affidavit of Fely Charito C. Sarmiento, p. 82.

¹⁷ Division docket, Exhibit "P-2", p. 24. 

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The said tax investigation was recently referred to our firm and in this regard, we would like to request and appeal from your good office for a re-investigation of the said tax case for our client to provide reasonable justification to your findings and not to be assessed by the amount shown in the assessment notice.

On behalf of our client, we would like to extend our sincerest apologies for the failure of the person tasked to attend to your notices and correspondences with the company. The person in-charge did not report the matter to the company's President which resulted to the seemingly negligence of their company in dealing and addressing your concerns. The matter had been a situation of staff negligence in handling this delicate matter.

Our client has no intentions whatsoever to deprive the government of collections due in the form of tax payments. We assured you of their full cooperation for the immediate closure of this tax case.¹⁸

Based on the foregoing, there is nothing which will guide the Court in determining whether the protest was timely filed.


However, whether the protest was timely filed or not, the protest is also invalid for failing to comply with Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, which states:

3.1.4. *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. xxx

xxx

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. (emphasis supplied)

The alleged protest dated March 7, 2011 clearly does not state any law, rules regulations, and jurisprudence upon which Citiparking bases its protest. On this ground alone, the

¹⁸ Division docket, Exhibit "P-2", p. 24. 

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protest is void and the assessment has become final and executory.

The CTA has jurisdiction on the issue of validity of a Warrant of Distraint and/or Levy.

In view of the finality of the FLD/FAN, Citiparking is barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits.¹⁹

Nevertheless, considering that Citiparking, in its Petition for Review filed before the Court in Division, prays for the cancellation of the assessments and the WDL on the ground of prescription of the CIR's right to collect, we affirm the CTA 3rd Division's assumption of jurisdiction under "other matters" to resolve the validity of WDL No. RR7-2016-07-15-0596.

The Court's jurisdiction over "other matters" is stated in Section 7(a)(1) of RA No. 1125, as amended, which provides:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

- (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; (*emphasis supplied*)

This appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds but covers other cases that arise out of the 1997 National Internal Revenue Code (NIRC), as amended, or related laws administered by the Bureau of Internal Revenue (BIR).²⁰

¹⁹ *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007.

²⁰ *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010. *cm*

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In *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*,²¹ the Supreme Court specifically recognized the jurisdiction of the CTA to determine if the WDL is validly issued, *to wit*:

The 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*)

Since Citiparking questioned the issuance and validity of WDL No. RR7-2016-07-15-0596 on the ground of prescription of the CIR's right to collect, the same falls under "other matters" over which the CTA has jurisdiction.

The CIR's right to collect the deficiency taxes has prescribed.

As to whether the CIR's right to collect the subject assessment has prescribed, we rule in the affirmative.

The period for assessment and collection of taxes is provided in Section 203 of the 1997 NIRC, as amended, *to wit*:

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 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.

Based on the foregoing, the CIR has three (3) years to assess deficiency internal revenue taxes, counted from the last day prescribed by law for the filing of the tax return, or from

²¹ G.R. No. 162852, December 16, 2004. *cm*

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the actual filing thereof, whichever comes later. The collection of such assessment must be made within three (3) years, counted from the date when the assessment notice has been released, mailed or sent to the taxpayer, as stated in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*²²:

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 notices had been released, mailed or sent to the taxpayer.** (*emphasis supplied*)

Thus, when the FLD/FAN was issued on December 15, 2010, the 3-year prescriptive period to collect commenced and thereafter lapsed on December 15, 2013. Clearly, the subject WDL was issued way beyond the prescriptive period on July 26, 2016.

This Court also finds no merit to the CIR's argument that Citiparking's request for reconsideration before the CIR, in the Letter²³ dated December 5, 2011, suspends the running of the prescriptive period for collection.

The applicable provision is Section 223 of the 1997 NIRC, as amended, which states:

SEC. 223. *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided,*

²² G.R. No. 197515, July 2, 2014.

²³ Division Docket, Exhibit "R-13", p. 257. *om*

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That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (*emphasis supplied*)

A perusal of the said Letter dated December 5, 2011, shows that the same is merely a request for reconsideration which would not suspend the running of the prescriptive period for collection.

As to the initial protest, dated March 7, 2011, it should be recalled that the same was not a valid protest for failure to state any law, rules and regulations, or jurisprudence upon which the protest is based. In the absence of a valid protest, there can be no valid request for re-investigation which would suspend the prescriptive period for collection.


In view of the foregoing, there is no compelling reason to reverse nor modify the conclusions of the CTA 3rd Division.

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue, is **DENIED** for lack of merit.

The Decision and Resolution, dated July 23, 2021 and April 28, 2022, respectively, in CTA Case No. 9451 are **AFFIRMED**.

The Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the foregoing assessments. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

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WE CONCUR:



ROMAN G. DEL ROSARIO

Presiding Justice



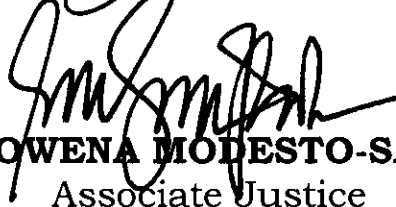
MA. BELEN M. RINGPIS-LIBAN

Associate Justice



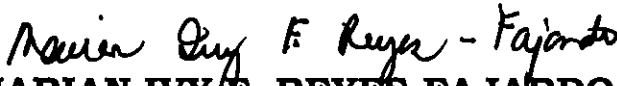
JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice



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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

