REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2830** (CTA CASE NO. 9623)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
JULIO R. DE QUINTO, *Respondent.*	Promulgated: APR 22 2025 2:26 pm

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DECISION

ANGELES, J.:

Before the Court of Tax Appeals *En Banc* (CTA En Banc) is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (Petitioner) on December 6, 2023, seeking the reversal of the July 4, 2023 *Decision*[2] (Assailed Decision) and the October 26, 2023 *Resolution*[3] (Assailed Resolution) of the Court of Tax Appeals Special First Division (CTA Division) in CTA Case No. 9623 entitled, *Julio R. De Quinto v. Bureau of Internal Revenue (BIR), thru Revenue District Offices No. 04 Mandaluyong City and 07, Quezon City.*

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[1] EB Docket, pp. 4 to 16.
[2] EB Docket, pp. 18 to 39, Penned by Associate Justice Catherine T. Manahan, concurred by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy Reyes-Fajardo.
[3] EB Docket, pp. 41 to 45.

THE PARTIES[4]

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR). The BIR is the national government agency charged to undertake the collection and enforcement of all national internal revenue taxes, among other functions. As Commissioner, petitioner has the power and authority to rule on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws administered by the BIR.

Respondent, Julio R. De Quinto, is a taxpayer residing at 315 Maysilo Street, Plainview Center Mandaluyong City, with Tax Identification No. (TIN) 100-053-269-000, and registered under the business name of JRDQ Aircon Services Center.

THE FACTS

The following are the relevant facts as found by the CTA Division in the Assailed Decision[5]:

> On October 29, 2012, respondent [herein petitioner] issued Letter Notice (LN) No. 041-RLF-11-00-00106 informing petitioner [herein respondent] De Quinto of his alleged underdeclared sales amounting to Php9,946,079.80 as a result of the computerized matching conducted by the BIR from the information/data provided by third party sources.
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> On January 14, 2013, petitioner [herein respondent] wrote Ms. Isabel A. Paulino, Revenue District Officer of RDO No. 41, Mandaluyong City to inform the latter that his business as dealer of Petron Corporation located at 198 Boni Avenue, Plainview, Mandaluyong City was already turned-over to Maximus Trading Inc. and has no business dealings with them anymore since late of year 2006.
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> On April 2, 2013, respondent [herein petitioner] issued Letter of Authority (LOA) No. SN: eLA201100026965/LOA-041-2013-00000128 authorizing Revenue Officer (RO) Virginia Rafols and Group Supervisor (GS) Evelyn Ang of RDO No. 41, Mandaluyong City to examine the books of accounts and other accounting records of petitioner [herein respondent] for income tax (IT) and value added-tax (VAT) covering the period from January 1, 2011 to December 31, 2011.

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[4] Petition for Review, EB Docket, p. 5.
[5] Division Docket, pp. 367 to 372.

On November 20, 2013, the RDO No. 41, Mandaluyong City issued the Notice for Informal Conference together with the Computation Sheet directing petitioner [herein respondent] to submit contrary evidence on its findings.

However, per undated Memorandum issued by RO Rafols to the Regional Director, petitioner [herein respondent] failed to provide the requested documents. Hence, on December 3, 2014, respondent [herein petitioner] issued the Preliminary Assessment Notice (PAN) with Details of Discrepancies for the alleged petitioner's [herein respondent's] deficiency IT and VAT.

On December 19, 2014, respondent [herein petitioner] issued the Formal Letter of Demand (FLD) with Details of Discrepancies together with the Assessment Notices for deficiency IT and VAT.

On March 13, 2017, a letter from the Regional Director informed petitioner [herein respondent] that for his failure to file a protest within the prescribed period, the assessment became final, executory and demandable.

An undated WDL was constructively served to petitioner [herein respondent] on May 30, 2017. Hence, petitioner [herein respondent] filed the instant petition on June 27, 2017.

On July 21, 2017, this Court directed respondent [herein petitioner] to file his *Answer* which he filed on August 7, 2017. Respondent [herein petitioner] raised the following Affirmative and Special Defenses, to wit:

> 1. The failure of the petitioner [herein respondent] to file an appeal before this Court within thirty (30) days from receipt of FLD renders the assessment final, executory and demandable, hence, the Court has no jurisdiction on the instant petition; and
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> 2. The Verification and Certification against Forum Shopping failed to comply with Section 4, Rule 7 of the Rules of Court, as amended.

On August 10, 2017, the parties were directed to submit their respective pre-trial briefs for the scheduled pre-trial conference. Respondent [herein petitioner] filed his Pre-Trial Brief on September 29, 2017, while petitioner [herein respondent] filed his Pre-Trial Brief on October 20, 2017.

The parties submitted their Joint Stipulation of Facts and Issues on April 18, 2018, hence, the Court issued the Pre-Trial Order on May 17, 2018.

After trial, the case was submitted for decision on July 18, 2022[6].

Petitioner then received a copy of the Assailed Decision on July 12, 2023[7]. The dispositive portion[8] of which provides:

Assailed Decision (July 4, 2023)

> **WHEREFORE,** premises considered, petitioner [herein respondent] Julio R. De Quinto's *Verified Petition* filed on June 27, 2017 is hereby **GRANTED.** The PAN dated December 3, 2014, FLD and Assessment Notices for deficiency IT and VAT for calendar year 2011, all dated December 19, 2014, Letter dated March 13, 2017 issued by Regional Director Marina C. De Guzman, and the undated WDL are **CANCELLED and SET ASIDE.**
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> The Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency IT and VAT assessments against petitioner [herein respondent] Julio R. De Quinto arising from the PAN dated December 3, 2014, FLD and Assessment Notices, all dated December 19, 2014, Letter dated March 13, 2017 issued by Regional Director Marina C. De Guzman, and the undated WDL. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.
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> **SO ORDERED.**

Thereafter, the petitioner filed a *Motion for Reconsideration*[9] on July 26, 2023. Although directed by the Court[10], the respondent initially failed to file its comment to the said *Motion*[11]. On August 29, 2023, respondent then filed a *Motion for Leave to Admit Comment/Opposition with Attached Comment/Opposition (for Petitioner De Quinto)*[12], which the CTA Division granted in a *Resolution* dated September 11, 2023[13].

Eventually, the CTA Division denied petitioner's *Motion for Reconsideration* in the Assailed Resolution. The dispositive portion provides:

Assailed Resolution (October 26, 2023)

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[6] Minute Resolution, Division Docket, p. 363.
[7] Notice of Decision, Division Docket, p. 365.
[8] Division Docket, p. 387.
[9] Division Docket, p. 389.
[10] Minute Resolution, Division Docket, p. 401.
[11] Records Verification dated August 24, 2023, Division Docket, p. 402.
[12] Division Docket, pp. 403 to 407.
[13] Division Docket, p. 412.

WHEREFORE, respondent's [herein petitioner's] *Motion for Reconsideration (on Decision dated July 4, 2023)* is hereby **DENIED** for lack of merit.

SO ORDERED.

THE PROCEEDINGS BEFORE THE CTA EN BANC

On November 21, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*[14]. The CTA En Banc resolved to grant the same in a *Resolution*[15] dated November 22, 2023, allowing petitioner to file its petition within a non-extendible period of fifteen (15) days or until December 7, 2023.

On December 6, 2023, the CTA En Banc received the present *Petition for Review*. Although previously ordered by the Court[16], herein respondent failed to timely file its comment to the *Petition*. Subsequently, the latter filed a *Motion for Extension of Time to File Comment (Order dated January 11, 2024)*[17] which was granted in a *Resolution*[18] dated February 1, 2024, subject to the condition that the comment is filed within ten (10) days or until February 7, 2024[19]. In compliance therewith, the respondent filed his *Comment (Petition for Review)*[20] on February 7, 2024.

The CTA En Banc took note of such *Comment* and submitted the case for decision on February 22, 2024[21].

THE ASSIGNMENT OF ERROR

Petitioner raised that the CTA Division allegedly erred in granting Respondent's *Petition for Review*[22] which as a result thereof, cancelled and set aside the Final Assessment Notice and Formal Letter of Demand (FAN/FLD) with Details of Discrepancies and the assessment in the amount of Php6,082,073.90, inclusive of increments for taxable year 2011.[23]

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[14] EB Docket, pp. 1 to 2.
[15] EB Docket, p. 3.
[16] EB Docket, p. 50.
[17] EB Docket, p. 51.
[18] EB Docket, p.54.
[19] EB Docket, p. 54.
[20] EB Docket, p. 57.
[21] EB Docket, p. 65.
[22] Division Docket, pp. 12 to 18.
[23] Petition for Review, Assignment of Error, EB Docket, p. 7.

THE ARGUMENTS

Petitioner's arguments[24]

Petitioner insists that the CTA Division had no jurisdiction and should not have taken cognizance of respondent's *Petition*, considering that the latter failed to previously file an administrative protest to the FAN/FLD before elevating the matter to the CTA. Thus, the assessment has already become final, executory, and demandable; making it beyond the judicial scrutiny of the CTA.

It avers that the respondent brought the matter to the CTA only on June 27, 2017 following its receipt of the Warrant of Distraint and/or Levy (WDL), and 921 days from the time the FAN/FLD was issued. Petitioner contends that bringing the matter to the CTA Division only after the WDL cannot be considered as covered by the "other matters" provision in Republic Act (RA) No. 1125, as amended.

Petitioner also cites Section 228 of the NIRC, implemented by Revenue Regulations (RR) No. 12-99, and as amended by RR No. 18-2013; where it states that the failure to file a valid protest against the FLD/FAN within thirty (30) days from its receipt shall render it undisputed, final, executory, and demandable. Petitioner claims that respondent received the FAN/FLD through its Secretary Ms. Janet Rinoza (Ms. Rinoza) when the latter affixed her signature and date of receipt thereto. It then had only until January 18, 2015 within which to file its protest to the FAN/FLD before the BIR. It was only on August 18, 2015 when a letter purporting to request for reinvestigation was filed.

Hence, petitioner emphasizes that for being an undisputed assessment, the CTA Division has no jurisdiction to take cognizance of the case.

Petitioner then continued by citing *Ace Publications, Inc. vs. The Commissioner of Customs and the Collector of Customs*[25], where it was ruled that courts are bound to take notice of the limits of their authority even though this is not questioned nor raised in the pleadings.

Furthermore, it also cited *Southeast Asian Fisheries Development Center – Aquaculture Department v. National Labor Relations Commission*[26], where it was held that jurisdiction is conferred by law, and not by estoppel.

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[24] EB Docket, pp. 7 to 14.
[25] G.R. No. L-18808, May 29, 1964.
[26] G.R. No. 86773, February 14, 1992.

Lastly, even assuming that the *Petition for Review* was proper and covered by the "other matters" provision, petitioner is firm that the CTA Division should have limited its determination to the validity of the WDL and not the whole assessment process.

Respondent's counter-arguments

Respondent counters by way of *Comment*[27], that the present *Petition* is a mere reiteration of the CIR's previous position before the CTA Division.

According to respondent, the present issue of jurisdiction is only being raised for the first time on appeal before the CTA En Banc, as this was never included in the *Joint Stipulation of Facts and Issues* (JSFI) agreed by the parties before the CTA Division. Respondent stresses that petitioner has fully participated in the proceedings, and that the present question of jurisdiction is being merely raised in order to prevent the Assailed Decision from becoming final and executory.

Respondent explained that its failure to protest the FAN/FLD was due to the fact that it was never personally received by him. It was only served to Ms. Rinoza, who was but a mere aide tasked to record transactions of the business, and not authorized to receive BIR correspondences on his behalf. Respondent points out that petitioner failed to secure the authority of Ms. Rinoza. In the regular course of business, it has always been respondent who personally exchanged communications with the tax examiners, and that the BIR did not exert any effort to personally serve the FAN/FLD to him.

Respondent claims on a violation of his right to due process for the reason that personal receipt of the assessment is an indispensable requirement.

Respondent cites Section 3.1.4 of RR No. 12-99, requiring the acknowledgment of the personal delivery by the taxpayer or duly authorized representative; and to indicate the designation and authority to act for and on behalf of the taxpayer.

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
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> xxx
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> 3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the

[27] EB Docket, pp. 57 to 63.

> Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. **If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand,** showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. *(Emphasis supplied)*

Respondent also cites the Supreme Court doctrine in the *Mannasoft Case*[28] that the need for such a requirement is anchored on the wisdom that the recipient must *possess a certain degree of authority or discretion, to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent.*

Considering the foregoing, the assessment could not have attained finality on the basis of the failure to protest the same since respondent denied having received the FAN/FLD. Respondent highlights the defective compliance and adherence to the due process requirement, making the deficiency tax assessment and the eventual issuance of the WDL void and without legal effect.

Lastly, respondent disagrees with the petitioner's contention that tax assessments are supported by factual and legal basis and are presumed correct. He maintains that the BIR assessed deficiency taxes on the basis of unverified Third Party Information (TPI). Other than that, the BIR failed to present any substantial and concrete evidence of the alleged underdeclared sales from purchased products from Petron. Corollary, respondent was able to present a witness from Petron Corporation who admittedly continued to use respondent's TIN despite the turnover of the business to a new owner. Respondent has also tried to address the matter to the BIR but never merited a response.

THE RULING OF THE COURT

The Petition for Review must be denied.

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[28] *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.

The Court observes that the present petition is an exact replication of the previous *Motion for Reconsideration*[29] filed before the CTA Division. However, the arguments raised by the petitioner will still be addressed accordingly.

The present petition was not timely filed

Rule 8 of the Revised Rules of the CTA (RRCTA)[30] provides:

> SEC. 3. *Who may appeal; period to file petition.* —
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> (b) A party adversely affected 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.** *(Rules of Court, Rule 42, sec. 1a) (Emphasis supplied)*

As a rule, the timely filing of a motion for reconsideration or new trial before the CTA Division is a prerequisite before an appeal to the CTA En Banc, and the failure to do so could be a ground for dismissal[31].

Records show that on July 12, 2023, petitioner took notice of the Assailed Decision. Thereafter, it timely and successfully filed a *Motion for Reconsideration* on July 26, 2023. It was then subsequently denied in the Assailed Resolution dated October 26, 2023.

However, upon careful examination of the records of this case, **crucial is the fact that as early as October 31, 2023, the Office of the Solicitor General (OSG) already received the *Notice of***

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[29] Division Docket, p. 389.
[30] Rules of the Court of Tax Appeals - approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals - approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[31] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 & 201680-81, April 19, 2017.

Resolution[32] **denying the Motion for Reconsideration**, as evidenced by the stamped receipt of the same.

It is key to point out that the Administrative Code of 1987 outlines the powers and functions of the OSG, including but not limited to, its duty to:

> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; **represent the Government and its officers in** the Supreme Court, the Court of Appeals, and **all other courts or tribunals in all civil actions** and special proceedings **in which the Government or any officer thereof in his official capacity is a party.**[33] *(Emphases supplied)*

This is also consistent with precedents and the established rule that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.[34] Such is the case notwithstanding Section 220 of the NIRC, as enunciated in *Civil Service Commission, et al. vs. Asensi*,[35] where the Supreme Court said that:

> ...the Court has already ruled on a similar argument before in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*,[36] which was previously cited in the assailed Resolution. In that case, the Commissioner of Internal Revenue invoked Section 220[37] of the Tax Reform Act of 1997 in asserting that its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government before the Supreme Court. The Court disagreed, stating that **'Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic.'** The Court again cited *Gonzales v. Chavez*[38] in holding that **'from the historical and statutory perspectives, the Solicitor General is the principal law officer and legal defender of the government.' Strikingly, the Tax Reform Act was a law enacted subsequent to the Administrative Code and is more specific in application to tax cases. Yet these considerations were not sufficient for the Court to consider**

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[32] Division Docket, p. 413.
[33] Section 35, Chapter 12, Title III, Book IV.
[34] *Civil Service Commission, et al. vs. Asensi*, G.R. No. 160657, December 17, 2004.
[35] G.R. No. 160657, December 17, 2004.
[36] G.R. No. 144942, July 2, 2002.
[37] "SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal actions for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner."
[38] G.R. No. 97351, February 4, 1992.

> **the powers granted to BIR legal officers under Section 220 of the Tax Reform Act as superseding those vested to the Solicitor General under the Administrative Code.** xxx. *(Emphases and underscoring added)*

Moreover, in *Republic of the Philippines, represented by the Land Registration Authority vs. Raymundo Viaje, et al.*,[39] it was established that the OSG remains to exercise supervision and control over the deputized lawyers and is entitled to be furnished of copies of all court orders, notices and decisions, to wit:

> The power of the OSG to deputize legal officers of the government departments, bureaus, agencies and offices to assist it in representing the government is well settled. **The Administrative Code of 1987 explicitly states that the OSG shall have the power to 'deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.' But it is likewise settled that the OSG's deputized counsel is 'no more than the 'surrogate' of the Solicitor General in any particular proceeding' and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.** xxx. *(Emphases and underscoring added)*

Furthermore, it must be pointed out that the deputized special attorney has no legal authority to decide whether or not an appeal should be made.[40] As a consequence, **copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.**[41] Also, **the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG.**[42]

To reiterate, Rule 8, Section 3(b) of the RRCTA provides that a party desiring to appeal an adverse decision or resolution of the CTA Division must file a petition for review **within fifteen (15) days *from receipt* of the adverse decision or resolution.** Moreover, an extension may only also be filed within such duration or before the expiration thereof.

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[39] G.R. No. 180993, January 27, 2016.
[40] *National Power Corporation vs. National Labor Relations Commission, et al.*, G.R. Nos. 90933-61, May 29, 1997.
[41] *Id.*
[42] *Id.*

Thus, considering that in this case, the Assailed Resolution was served to and received by the OSG on October 31, 2023[43], petitioner had fifteen (15) days therefrom or until November 15, 2023 to either file an appeal or motion for extension of time to file the same before the CTA En Banc, notwithstanding the fact that the BIR received the Assailed Resolution only on a later date, i.e., on November 7, 2023.

Consequently, since it was only on November 21, 2023 when the Petitioner filed the present *Motion for Extension of Time to File Petition for Review*[44], and although granted in a *Resolution*[45] dated November 22, 2023, allowing herein petitioner to file the present *Petition* until December 7, 2023, it does not change the fact that no Petition for Review nor a Motion for Extension was filed on or before November 15, 2023. Hence, the present *Petition* was filed out of time.

Nevertheless, even if such Petition was timely filed, the present appeal will still fail on the merits as will be discussed below.

Questions as to jurisdiction over the subject matter may be raised anytime even for the first time on appeal

Contrary to respondent's argument, jurisdiction over the subject matter may be raised at any stage of the proceedings even for the first time on appeal, unless the right to question the same is already barred by laches.[46]

Jurisdiction over the subject matter is defined as the power of the court to hear and determine cases of the general class **to which the proceedings in question belong**[47]. *(Emphasis Supplied)*

The question as regards the "other matters" provision of the CTA Law, and whether the CTA can take cognizance of an appeal in relation to a WDL is an issue concerning jurisdiction over the subject matter. Moreover, it is a question of law covered by the appellate jurisdiction of the CTA En Banc.

Respondent's contention that the non-inclusion of the issue on jurisdiction in the parties' JSFI before the CTA Division is of no

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[43] Refer to Notice of Resolution dated October 27, 2023, Division Docket, p. 413.
[44] EB Docket, pp. 1 to 2.
[45] EB Docket, p. 3.
[46] *Victoria Manufacturing Corporation Employees Union v. Victoria Manufacturing Corp.*, G.R. No. 234446. July 24, 2019.
[47] *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

moment. It does not prevent the petitioner from eventually questioning the same, for jurisdiction over the subject matter cannot be waived, enlarged or diminished by stipulation of the parties.[48]

The fact is, despite not being included in the JSFI, examining the records of this case would reveal that as early as the filing of the *Answer*[49], petitioner already raised the question of jurisdiction as part of its special and affirmative defenses.

Having settled that petitioner can properly question the jurisdiction over the subject matter, the CTA En Banc will now resolve the very issue of this appeal - whether the CTA Division has jurisdiction to take cognizance of the case before it.

The CTA Division has jurisdiction over CTA Case No. 9623; the WDL is covered by the "other matters" provision of the CTA Law

The CTA is governed by RA 1125[50], as amended by RA 9282[51] (CTA Law). Accordingly, Section 7 of the CTA Law is instructive on the matter of its jurisdiction. The relevant portion as to this case provides:

> SECTION 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
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> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or ***other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue.*** *(Emphasis supplied)*

As correctly held by the CTA Division in the Assailed Decision, the latter cited *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[52] (PJI case), where it has long been established by the Supreme Court that the CTA is not limited to only review by appeal,

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[48] *Republic v. Estipular*, G.R. No. 136588, July 20, 2000.
[49] Division Docket, pp. 39.
[50] AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.
[51] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30 2004.
[52] G.R. No. 162852, December 16, 2004.

the decisions of the CIR. It stressed on Section 7 of the CTA Law and sufficiently ruled that the CTA also has jurisdiction over "other matters" in relation to the NIRC or other laws administered by the BIR. Consequently, the Supreme Court upheld the CTA Division in acting on an appeal based on a WDL for being covered by other matters arising from the NIRC and administered by the BIR, to wit:

> **The wording of the provision is clear and simple. <u>It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid</u> and to rule if the Waiver of Statute of Limitations was validly effected.** *(Emphasis Supplied)*

This runs contrary to petitioner's contention that the failure to administratively protest the assessment before BIR automatically deprives the taxpayer from appealing to the CTA. There are also *other matters* which the taxpayer can ask the CTA to pass upon - as in the present case, the validity of the WDL.

Similarly, there was also no prior administrative protest that was filed in the PJI case. Still, the Supreme Court sustained the CTA in taking cognizance of the appeal on the basis of the WDL. Accordingly, the Supreme Court had to evaluate and resolve on the assessment from which it is based to wit:

> In the same manner, **the warrant of distraint and/or levy was null and void for having been *issued pursuant to an invalid assessment.*** *(Emphasis Supplied)*

In addition, the Supreme Court in recent cases has consistently maintained the jurisdiction of the CTA to rule on the validity of a WDL[53]. In the *Mannasoft Case*[54], it even upheld the CTA in ruling on an appeal that is not reckoned from the inaction of the BIR, nor the issuance of the WDL, but way beyond. The appeal was based on a BIR letter issued after the WDL. On such note, the Supreme Court held that *the assessment notices, and, by extension, the WDL, are void for violating petitioner's right to due process.*

Moreover, in *Commissioner of Internal Revenue vs. Court of Tax Appeals and Petron Corporation*[55], the Supreme Court, in citing the 2016 case of *Banco de Oro vs. Republic of the Philippines*[56], has even

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[53] *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023.
[54] *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
[55] G.R. No. 207843, February 14, 2018.
[56] G.R. No. 198756, August 16, 2016 (Resolution).

widely held that all tax-related concerns should be exclusively brought to, and resolved by the CTA.

Having established by jurisprudence that the CTA may rule upon other matters and specifically, the WDL, this Court concludes that the CTA Division did not err when it took cognizance of the Petition for Review filed before it. We find no reason to disturb the same.

As found by the CTA Division, it was on May 30, 2017, when an undated WDL was served to the respondent. In less than thirty (30) days, respondent promptly appealed and sought relief from the CTA by filing its *Petition for Review*[57] on June 27, 2017.

Hence, the WDL, being an issue covered by the "other matters" provision of the CTA Law and supported by the timely filing of a Petition for Review with the CTA Division, the latter properly acted on the appeal before it.

To properly rule on the validity of the WDL, the CTA Division had to revisit the assessment on which it is based

The petitioner argues that even if it is to be submitted that the CTA has jurisdiction over the case, the CTA should have only limited its determination on the validity of the WDL. It should not have gone beyond the subject matter of its appeal in ruling on the assessments.

We disagree.

The fact is, the *validity* of the WDL *as well as the assessments* were included in the parties' agreed issues in the JSFI[58] to wit:

> xxx
>
> 2. Whether the **Tax Assessments** of Php6,082,73.90 and the subsequent **Warrant of Distraint and/or Levy** be declared null and void *(Emphasis Supplied)*

Nevertheless, even if such matter was not considered as a stipulated issue, the RRCTA expressly provides that the CTA may not limit itself in ruling on the stipulated issues of the parties. It may

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[57] Division Docket, pp. 12 to 17.
[58] Division Docket, p. 132.

further rule on *related issues necessary to achieve an orderly disposition of the case*[59].

Respondent has anchored its *Petition for Review*[60] before the CTA Division when it received a WDL and was being made to pay tax even though the liability to pay the same is no longer with him. In its *Comment* to the Petition for Review before this Court, it reiterated that it presented a witness from Petron Corporation who admitted to have mistakenly used his TIN in some of its transactions. Additionally, respondent denies the personal receipt of the FAN/FLD. The very moment a WDL was served, he then promptly elevated the matter before the CTA Division.

The CTA Division, in acting upon the appeal relative to the WDL, naturally had to look into the assessment on which it is based, as well as the events prior to the issuance of the WDL. This is a related issue that needs to be tackled in order to arm the CTA Division with sufficient basis to make a sound judgment on the matter. In its further review of the case, the CTA Division was then able to conclude that the assessment was null and void for being based on presumptions. The tax examiners who conducted the audit failed to secure a sworn statement from the TPI providers, to wit:

> *It is very clear from RO Rafols' testimony that they failed to validate the information provided by such computerized matching. If only they have validated from Petron itself, it will come to their knowledge that petitioner has no more transactions with Petron in the year 2011 as testified by Mr. Adrian Mercado, Special Assistant at Petron's Office of the Chief Finance Officer, to wit:*[61]
>
> xxx
>
> *Considering that the assessment contained in the LN were not fully validated either from the third party sources or from petitioner's accounting records, such assessments were not based on facts but merely on presumption. Thus, the assessment was null and void pursuant to Section 228 of the 1997 NIRC, as amended.*

Contrary to petitioner's argument that the assessments are presumed correct, it is apparent from the testimonial evidence presented that the BIR failed to support the same. By only basing the

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[59] Rule 14, Section 1, Rules of the Court of Tax Appeals - approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals - approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[60] Division Docket, pp. 12 to 17.
[61] Decision, EB Docket, p. 33, 37.

assessments on mere unverified TPI, the issuance of the WDL cannot find its core on such presumptions. *In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.* ***The presumption of correctness of an assessment being a mere presumption cannot be made to rest on another presumption.***[62]

In the PJI case, the Supreme Court had to rule on the validity of the assessment before it could rule on the WDL. It eventually concluded that *the warrant of distraint and/or levy was null and void for having been issued pursuant to an invalid assessment.*

Furthermore, not only was the assessment based on mere presumptions, herein respondent was also not properly informed of the same for the failure of the BIR to personally serve to respondent or its authorized representative.

Settled is the rule that if a taxpayer disputes or denies the receipt of the assessment, the burden to prove otherwise by competent evidence is shifted to the BIR[63]. Here, the BIR merely relied when a certain Ms. Rinoza affixed her signature with the date of receipt "12-19-14" on the FAN/FLD. It appears that the BIR did not take other measures to serve the same to respondent nor did it ascertain that Ms. Rinoza is the duly authorized representative of respondent. As the latter counters, Ms. Rinoza was a mere aide tasked to record transactions.

To reiterate the *Mannasoft* case[64], the Supreme Court ruled:

> Having failed to properly serve petitioner with the NIC and the PAN, it necessarily follows that the succeeding FAN was void and without effect.
>
> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect. **Consequently, given that the assessment notices were void, the resulting WDL is likewise invalid and without effect.** *(Emphasis Supplied)*

Even assuming *arguendo* that respondent received the FAN/FLD through its authorized representative, the CTA Division has

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[62] *Commissioner of Internal Revenue v. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.
[63] *Commissioner of Internal Revenue v. GJM Phil. Manufacturing Inc*, G.R. No. 202695, February 29, 2016.
[64] *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.

already and properly ruled that the assessment is invalid on which the WDL has been based, for being based on mere presumptions.

In *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*[65], the Supreme Court ruled that:

> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executor, and demandable **should be premised on the validity of the assessments themselves**. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance, the CIR's argument necessarily fails. *(Emphasis Supplied)*

On a final note, this Court has observed the apparent inconsistency or difference in petitioner's position as regards when an assessment becomes final, executory, and demandable.

Before the CTA Division, the petitioner argued **that the failure of the petitioner to file an appeal before this Court within thirty (30) days from receipt of the FAN/FLD renders the assessment final, executory and demandable, hence, the Court has no jurisdiction on the instant petition.**[66]

On the other hand, in the present petition, the CIR now hinges that an assessment becomes final and executory when the taxpayer **fails to to file an administrative protest before the BIR.**

In an attempt to have its case reconsidered by the CTA En Banc, petitioner persuades this Court to rule otherwise by changing its theory. The Court is not convinced. In *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue*[67], the Supreme Court pronounced:

> Certainly, the thrust of proscribing a change of argument on appeal rests on upholding the basic tenets of equity and fair play. "When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."

Consequently, even if petitioner were to change its theory, the fact remains that the CTA Division had jurisdiction and did not err in

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[65] G.R. No. 240729, August 24, 2020.
[66] *Decision*, EB Docket, p. 24; Par. 13, *Answer*, Division Docket, p. 42.
[67] G.R. No. 249153, September 12, 2022.

ruling that the assessments made against herein respondent are without any basis.

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

Consequently, the Assailed Decision and Resolution dated July 4, 2023 and October 26, 2023, respectively, are hereby **AFFIRMED.**

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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

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