REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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GOLDEN DONUTS, INC.,	**CTA Case No. 9676**
Petitioner,	
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 24 2018 ; 1:05pm

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RESOLUTION

For resolution are the following:

1. Petitioner's **"Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction"** filed on August 31, 2017; and

2. Respondent's **"MOTION TO DISMISS"** filed on September 19, 2017.

Records show that on August 31, 2017, petitioner filed its *Petition for Review (With Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)*, praying for the issuance of a temporary restraining order and a writ of preliminary injunction to restrain: (1) the continuation of the BIR's investigation, in general, and examination and inspection of the books, in particular, of petitioner for taxable year ending December 31, 2007, and (2) the enforcement of the *subpoena duces tecum* issued by respondent on August 23, 2017.

On the other hand, respondent filed his *Opposition With Motion To Dismiss* on September 19, 2017.

Petitioner's arguments on the Urgent Motion:

Petitioner argues that it has a clear and unmistakable right to substantive and procedural due process in the issuance of Letter of Authority (LOA) No. LOA-211-2017-00000037 (eLA201500081454) dated April 27, 2017. Allegedly, respondent's right to investigate and issue deficiency tax assessments against petitioner for the year 2007 has already prescribed. Petitioner contends that it urgently needs the injunctive reliefs against the act of respondent, his representatives, and agents, of continuing the re-investigation, re-inspection, re-examination, and re-audit of petitioner for the 2007 taxable year based on the said LOA as well as the compulsion for petitioner or its representative to appear before the Assistant Commissioner for Enforcement and Advisory on September 6, 2017.

Respondent's counter-arguments in the Opposition With Motion to Dismiss:

In respondent's Opposition with Motion to Dismiss, respondent urges the Honorable Court to deny petitioner's Application for Temporary Restraining Order and/or Writ of Preliminary Injunction based on the grounds that : this Court has no jurisdiction over the instant case; and that petitioner is allegedly not entitled to the injunctive relief prayed for.

Respondent states that while on one hand, Section 218 of the National Internal Revenue Code of 1997, provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code.

On the other hand however, and while maintaining that the Honorable Court has no jurisdiction over the instant petition, Section 11 of Republic Act No. 1124, as amended by Republic Act No. 9282 provides that no appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided however that when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

Based on the above provisions of law, although the Honorable Court has the power to suspend collection of taxes, this does not however include the exercise of respondent's power to assess or conduct audit or investigation on whether proper taxes have been paid.

Thus, respondent submits that jurisprudentially, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

Petitioner's reply to respondent's Opposition With Motion to Dismiss :

In reply to respondent's *Opposition With Motion to Dismiss*, petitioner contends that any adverse decision of the respondent involving matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR) is appealable to this Court. Allegedly, respondent's discretionary powers are not superior to this Court's power of judicial review.

According to petitioner, the instant *Petition* seeks an injunction to restrain the investigation of petitioner under the RATE Program and not the collection of any national internal revenue tax; and that petitioner has a clear and unmistakable right to due process and to be protected against unreasonable investigation.

THE COURT'S RULING

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[1] It is conferred

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[1] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, citing *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.

only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[2] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[3] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[4] Thus, respondent's *Motion to Dismiss* must perforce be primarily addressed.

At this juncture, it must be emphasized that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction,[5] as conferred under Section 7 of Republic Act (RA) No. 1125,[6] as amended by RA No. 9282,[7] to wit:

> "**SEC. 7. *Jurisdiction.*** — The CTA shall exercise:
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> (a) 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 in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of

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[2] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

[3] *Id.*, citing *Justino Laresma vs. Antonio P. Abellana*, G.R. No. 140973, November 11, 2004.

[4] *Id.*

[5] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

[6] AN ACT CREATING THE COURT OF TAX APPEALS.

[7] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING THE 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.

Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8880, where either party may appeal the decision to impose or not to impose said duties.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular

Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(b) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessment for taxes, fees, charges and penalties: *Provided, however*, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

(2) Exclusive appellate jurisdiction in tax collection cases:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of

> the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction."

To reiterate, considering that this Court is a court of special jurisdiction, it can only take cognizance of the foregoing cases.

In the instant *Petition for Review*, petitioner, *in esse*, questions the legality of the exercise of respondent of his power: (i) to issue a letter of authority under Section 235 in relation to Section 13 of the NIRC of 1997; (ii) to issue a *subpoena duces tecum* under Section 5 of the same Code; and (iii) to conduct an examination of petitioner's books of accounts for taxable year 2007, purportedly by reason of the alleged prescription of respondent's right to issue deficiency taxes under Section 203 of the NIRC of 1997.

We do not find, however, that the aforementioned exercise of respondent's powers assailed in the instant *Petition for Review* fall under any of the above enumerations over which this Court has jurisdiction.

Nevertheless, in arguing that the Court has jurisdiction over the subject matter of its *Petition for Review*, petitioner insists that the reopening by respondent of the audit and examination of its books of accounts and other accounting records for taxable year 2007 which had already been closed and terminated, and the prescription of respondent's right to assess petitioner for deficiency taxes for such taxable year, are within the Court's jurisdiction for being under the purview of ***"other matters arising under the National Internal Revenue Code"***.[8]

We do not agree.

The appeal to this Court over the issuance of LOA No. LOA-211-2017-00000037 (eLA201500081454) and the August 23, 2017 *Subpoena Duces Tecum* can hardly fall within the enumerated matters that the Court may take cognizance at this stage.

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[8] Par. 44, *Petition for Review*, Docket, p. 20.

Otherwise stated, a *Petition for Review* assailing an interlocutory action of respondent prior to the issuance of a final assessment is premature and may not be construed within the context of *"other matters arising under the National Internal Revenue Code"* as appearing in Section 7(1) of RA No. 1125, as amended by RA No. 9282. Thus, in *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*,[9] the Supreme Court made the following clarification, *viz*:

> "xxx **the phrase 'other matters arising under this Code,' as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrases 'disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto' and must therefore not be taken in isolation to invoke the jurisdiction of the CTA.** In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.
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> xxx xxx xxx
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> **In this case, there was even no tax assessment to speak of. While customs collector Federico Bulanhagui himself admitted during the CTA's November 8, 2012, hearing that the computation he had written at the back page of the IEIRD served as the final assessment imposing excise tax on Petron's importation of alkylate, the Court concurs with the CIR's stance that the subject IEIRD was not yet the customs collector's final assessment that could be the proper subject for review.** And even if it were, the same should have been brought first for review before the COC and not directly to the CTA. It should be stressed that the CTA has no jurisdiction to review by appeal, decisions of the customs collector. The TCC prescribes that a party adversely affected by a ruling or decision of

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[9] G.R. No. 207843, July 15, 2015.

> the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by the action of the customs collector on the matter under protest, may have the same reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved party file an appeal to the CTA." *(Emphases supplied)*

As correctly raised by respondent, the Court cannot, at this stage, prevent respondent from exercising his official mandate to authorize the examination of any taxpayer and the assessment of the correct amount of tax, pursuant to Section 6(A) of the NIRC of 1997. It is only after the audit and examination, and the issuance of the final assessment notice, that the party disputing the assessment may resort to this Court to appeal respondent's inaction or denial of its protest or prevent respondent from enforcing collection thereof; otherwise, invocation of this Court's jurisdiction questioning each and every step undertaken by respondent during the course of the assessment process would simply invite multiplicity of suits which, needless to say, is anathema to the sound administration of justice.

Incidentally, petitioner cited cases[10] to justify that the Court has jurisdiction over the subject matter of the *Petition for Review*. A careful perusal of the facts involved therein, however, would reveal that the subject thereof was confined neither to the mere issuance of a letter of authority or *subpoena duces tecum* nor to any action of respondent prior to the issuance of the final assessment notice. Indeed, this Court has jurisdiction to take cognizance of said cases as the issues involved therein revolve around the final assessments issued by respondent.

Since this Court has not acquired jurisdiction over the subject matter of petitioner's appeal, the *Petition for Review* must perforce be dismissed. In the same vein, considering that the Court does not have jurisdiction to entertain the main action of the case, then it follows that the motion for issuance of *Temporary Restraining Order* and/or *Writ of Preliminary Injunction*, being ancillary to the principal controversy, must likewise be dismissed.

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[10] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010; *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, CTA EB No. 1204, March 17, 2016; *Jacinto-Henares vs. Atlas Consolidated Mining and Development Corporation*, CTA EB No. 1101, August 14, 2015.

As aptly pointed out by respondent, the pronouncement of *BF Homes, Inc., and The Philippine Waterworks and Construction Corporation vs. Manila Electric Company*[11] is instructive, to wit:

> "Since the RTC had no jurisdiction over the Petition of BF Homes and PWCC in Civil Case No. 03-0151, then it was also devoid of any authority to act on the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction contained in the same Petition. **The ancillary and provisional remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding.**" *(Emphasis supplied)*

WHEREFORE, premises considered, respondent's *Motion to Dismiss* is **GRANTED**. Accordingly, the instant *Petition for Review* is **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[11] G.R. No. 171624, December 6, 2010.