REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO, Petitioners,	**CTA Case No. 8683**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** JJ.
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 29 2022 3:26 p.m.

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DECISION

UY, J.:

Before this Court is the *Amended Petition for Review*[1] filed on May 23, 2014, by Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao, petitioners, against the Commissioner of Internal Revenue, respondent, praying for the cancellation of the deficiency income tax assessments for taxable years 2008 and 2009 in the aggregate amount of ₱2,229,020,905.50, inclusive of interests and surcharges.

THE PARTIES

Petitioners are spouses Emmanuel D. Pacquiao (EDP) and Jinkee J. Paquiao (JJP) with resident address at Poblacion, Kiamba, Saranggani Province.[2] Petitioner EDP is a world famous Filipino professional boxer and product endorser.[3]

[1] Docket – Vol. III, pp. 1229 to 1272.
[2] Paragraphs 1 and 2, *Summary of Admitted Facts, Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. XI, p. 5170.
[3] Par. 5, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5171.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the Bureau of Internal Revenue (BIR) National Office, Diliman Quezon City.[4]

THE FACTS

As culled from the records of the case and as stipulated by the parties in their *Joint Stipulation of Facts and Issues* (JSFI)[5], the established facts of the case are as follows.

In the years 2008 and 2009, petitioner EDP's professional earnings were sourced from the United States and the Philippines[6]. His Philippine-sourced income consisted of talent fees received from various Philippine Corporations for product endorsements, advertising commercials and television appearances in the Philippines.[7]

EDP filed his *2008 Annual Income Tax Return*[8] (ITR) on April 15, 2009, and *Amended 2008 Annual ITR*[9] on February 19, 2010. On April 15, 2010, petitioner EDP filed his *2009 Annual ITR*.[10]

Petitioner EDP received Letter of Authority (LOA) No. 2008-0049803 dated March 19, 2010 (or "March 2010 LOA") signed by Antonio F. Montemayor, Regional Director of Revenue Region No. 7 of the BIR, authorizing Revenue Officer (RO) Rosalina Reyes and Group Supervisor (GS) Antonino Ilagan of RDO No. 43A (East Pasig) to examine the books of accounts and other accounting records of petitioner from January 1, 2008 to December 31, 2008.[11]

On August 13, 2010, respondent issued LOA No. 2009-00044656 dated July 27, 2010 (or "July 2010 LOA"),[12] addressed to petitioners, authorizing ROs Leonesto Bernal, Amelita Aquino, Fernando Malonzo and GS Virma Clemente[13] of the BIR National

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[4] Par. 3, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5170.
[5] Docket – Vol. XI, pp. 5170 to 5185.
[6] Par. 10, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5171.
[7] Par. 11, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5171.
[8] Exhibit "P-6", Docket – Vol. I, pp. 239 to 241.
[9] Exhibit "P-7" and "P-7-A", Docket – Vol. I, pp. 242 to 244; and Exhibit "R-30", BIR Records –Folder 1, p. 108.
[10] Exhibit "P-8", Docket – Vol. I, pp. 246 to 248; Exhibit "R-31", BIR Records – Folder 1, p. 106.
[11] Par. 12 and 13, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5172.
[12] Exhibit "P-18", Docket – Vol. I, p. 108; Exhibit "R-33", BIR Records – Folder 2, p. 5.
[13] Par. 15, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5172

Investigation Division (NID) to conduct investigation on the books of accounts of both petitioners covering taxable years 1995 to 2009.

Pursuant to the Run After Tax Evaders (RATE) program of respondent, electronic LA (eLA) 201000015017[14] dated September 21, 2010 and eLA 201000015015[15], dated September 22, 2010, were separately issued to EDP and JJP, respectively, authorizing ROs Bernal, Aquino, Malonzo and GS Clemente of the NID to examine the books of accounts and other accounting records of petitioner for the period of January 1, 1995 to December 31, 2009.[16]

Respondent issued an *Initial-Assessment – Informal Conference* dated January 31, 2012[17], informing petitioners of the initial findings of the BIR examiner.[18]

On February 20, 2012, the BIR issued a *Preliminary Assessment Notice*[19] (PAN), with *Details of Discrepancy*, assessing petitioners with deficiency income tax and VAT for taxable years 2008 and 2009.

On March 27, 2012, petitioners filed their *Protest* to the PAN.[20]

A *Formal Letter of Demand* (FLD) with *Details of Discrepancies* dated May 2, 2012[21] was issued against petitioners, reiterating the assessment for deficiency income tax and VAT, with modification on interest, in the aggregate amount of ₱2,200,310,745.23, detailed as follows:

2008	
Income tax	₱ 762,515,263.48
VAT	4,374,267.14
	766,889,530.62
2009	
Income Tax	₱ 1,406,715,144.03
VAT	26,706,070.58
	1,433,421,214.61
TOTAL	**₱2,200,310,745.23**

[14] Exhibit "P-56", Docket – Vol. II, p. 831; Exhibit "R-37-1", BIR Records – Folder 2, p. 1.
[15] Exhibit "P-57", Division Docket – Vol. II, p. 832-; Exhibit "R-37", BIR Records – Folder 2, p. 2.
[16] Par. 16, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5173.
[17] Exhibit "R-40", BIR Records - Folder 1, pp. 76 to 84.
[18] Par. 20, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5173.
[19] Exhibit "R-42", BIR Records – Folder 2, pp. 60 to 63.
[20] Exhibit "P-73", Docket – Vol. XI, pp. 5325 to 5341; BIR Records, Folder 1, pp. 9 to 25.
[21] Exhibit "R-19", BIR Records – Folder 2, pp. 106 to 112.

The *Protest* to the FLD was filed by petitioners on July 20, 2012.[22] Respondent thereafter issued the *Final Decision on Disputed Assessment* (FDDA) with *Details of Discrepancy* dated May 14, 2013[23], assessing petitioner EDP with deficiency income tax and VAT, broken down as follows:

2008	
Income tax	₱ 780,410,875.08
VAT	3,847,675.06
2009	
Income Tax	₱ 1,448,610,030.42
VAT	28,349,459.36
TOTAL	₱ **2,261,217,439.92**

On July 23, 2013, petitioners received the *Preliminary Collection Letter*[24] (PCL) dated July 19, 2013, issued by the BIR-Accounts Receivable Monitoring Division (ARMD), directing them to pay the deficiency taxes indicated in the FDDA amounting to ₱2,261,217,439.92, within ten (10) days from receipt.[25]

A *Final Notice Before Seizure*[26] (FNBS) dated August 7, 2013 was then issued by respondent to petitioners directing them to pay the deficiency taxes within ten (10) days from notice, otherwise respondent will serve and execute the *Warrants of Distraint and/or Levy and Garnishment.*

Petitioners decided not to contest the 2008 and 2009 VAT assessments.[27] Records show that petitioners paid the deficiency VAT assessments as follows:

	Date	Amount
1st Installment	September 13, 2013	₱ 961,768.77[28]
	September 13, 2013	7,087,364.86[29]
2nd Installment	December 23, 2013	2,885,306.29[30]
	December 20, 2013	21,262,094.50[31]
TOTAL		₱ **32,196,534.42**

[22] Exhibit P-75, Docket – Vol. XI, pp. 5130 to 5148.
[23] Exhibit "P-60-1", Docket – Vol. V, pp. 2473 to 2488; Exhibit "R-1", BIR Records – Folder 2, pp. 150 to 165.
[24] Docket – Vol. I, p. 234.
[25] Par. 24, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5174; Exhibit "P-1 Suspension," Docket – Vol. I, p. 234
[26] Exhibit "P-10", Division Docket – Vol. I, p. 251.
[27] Par. 27, *Summary of Admitted Facts, JSFI*, Docket – Vol. XI, p. 5174; Exhibit "P-11 Suspension," Docket – Vol. I, pp. 252 to 254
[28] Exhibits "P-12-A" and "P-12-B" Docket – Vol. I, pp. 256 to 257.
[29] Exhibits "P-12-C" and "P-12-D", Docket – Vol. I, pp. 258 to 259;
[30] Exhibits "P-65" to "P-66", Docket – Vol. V, pp. 2494 to 2496.
[31] Exhibits "P-67" to "P-68", Docket – Vol. V, pp. 2497 to 2499.

On July 1, 2013, respondent issued *Warrant of Distraint and/or Levy and Warrants of Garnishment.*[32]

Petitioners' Petition for Review

Aggrieved by the issuance of the FDDA, petitioners filed the instant *Petition for Review*[33] on August 1, 2013, which was docketed as CTA Case No. 8683, assailing the assessment for deficiency income tax amounting to ₱2,229,020,905.50 for taxable years 2008 and 2009. This case was assigned to the First Division of this Court.

On October 21, 2013, respondent filed his *Answer*[34] interposing affirmative and special defenses, which include among others, the following: (a) the *Petition for Review* was filed beyond the 30-day period from petitioners' receipt of the FDDA, hence, the assessments had already become final and demandable; (b) the due process requirement under Section 3 of Revenue Regulations No. 12-99 was validly complied with; (c) an assessment based on "Best Evidence Obtainable" is sanctioned by law; (d) the assessment notices issued against petitioners are valid and lawful; (e) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but that the taxpayer is right; and (f) the presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.

On December 23, 2013, petitioners filed their *Reply (To Answer dated 14 October 2013)*[35], stating, among others, that respondent failed to establish that petitioners actually received a copy of the FDDA; that an assessment for deficiency taxes based on possible sources is void; and that the presumption of correctness and good faith do not apply to the subject assessments since they have been arbitrarily issued.

Petitioners' Motion to Suspend Collection of Tax

Meanwhile, on October 18, 2013, petitioners filed an "*Urgent Motion to Lift the Warrants of Distraint & Levy and Garnishment and*

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[32] Exhibits "P-21" to "P-22", "P-24 to P-55", Docket – Vol. I, pp. 442 to 444 and pp. 454 to 472; Docket – Vol. II, pp. 818 to 830.
[33] *Petition for Review*, Docket – Vol. 1, pp. 6 to 43.
[34] Docket – Vol. 1, pp. 267 to 286.
[35] Docket – Vol. II, pp. 537 to 547.

for the Issuance of an Order to Suspend the Collection of Tax (With Prayer for the Issuance of A Temporary Restraining Order)", praying for the issuance of a Temporary Restraining Order (TRO) against the *Warrants of Distraint/Levy and Garnishment* issued by the CIR against their assets and to enjoin the CIR from collecting the assessed deficiency taxes pending the resolution of their appeal.[36]

On October 23, 2013, respondent filed his *Comment and/or Opposition [Re: Petitioner's Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax (with Prayer for the Issuance of a Temporary Restraining Order)]*[37].

During the hearing of petitioners' *Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax*, petitioners presented Richard S. Querido[38], who assisted petitioners in the preparation and filing of their income tax returns; and Marycrist Dapidran-Ibañez[39], petitioner EDP's Personal Assistant who assisted petitioner EDP in paying for his personal expenses. Petitioners likewise presented Rosanna P. San Vicente, Chief of ARMD and Leonesto D. Bernal, RO II at the NID, who both appeared pursuant to *Subpoena Duces Tecum* issued on October 31, 2013.[40] Petitioners presented RO Leonesto Bernal as hostile witness during the hearing held on January 28, 2014.[41]

Petitioners filed their *Formal Offer of Documentary Evidence for Petitioners (Re: Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax [with Prayer for the Issuance of a Temporary Restraining Order])*[42] on November 7, 2013; while respondent filed his *Comment (Re: Petitioners' Formal Offer of Evidence)*[43] on November 13, 2013.

In the Resolution[44] dated December 3, 2013, the Court admitted all of petitioners' exhibits.

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[36] Docket – Vol. I, pp. 199 to 214.
[37] Docket – Vol. I, pp. 320 to 330.
[38] Docket – Vol. I, pp. 219 to 233.
[39] Docket – Vol. I, pp. 446 to 453.
[40] Minutes of Hearing held on November 5, 2013, Docket – Vol. I, pp. 355 to 359.
[41] Minutes of Hearing held on January 28, 2014, Docket – Vol. II, p. 798.
[42] Docket – Vol. I, pp. 376 to 390.
[43] Docket – Vol. I, pp. 473 to 475.
[44] Docket – Vol. I, pp. 520 to 521.

On the other hand, respondent presented the following witnesses as counter-evidence to petitioners' *Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax*: (1) Virma C. Clemente[45], Chief, RO Supervisor at the NID; (2) Amelita R. Aquino[46], Intelligence Officer III at the NID; (3) Cynthia M. Catolico[47], RO III at the ARMD; (4) Ferdinand G. Malonzo[48], Intelligence Officer at NID; (5) Ma. Lourdes M. Sante[49], RO II at the NID. Respondent likewise presented Maveronica C. Dela Cruz, a Customer Associate at LBC[50], who appeared pursuant to a *Subpoena Duces Tecum and Ad Testificandum*[51] dated January 14, 2014.

On February 3, 2014, respondent filed his *Formal Offer of Evidence*[52]; while petitioners filed their *Supplemental Formal Offer of Documentary Evidence for Petitioners (Re: Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax [with Prayer for the Issuance of a Temporary Restraining Order])*[53].

On February 10, 2014, petitioners filed their *Comment/ Opposition to Respondent's Formal Offer of Evidence.*[54]

On February 11, 2014, respondent filed his *Comment (Re: Supplemental Formal Offer of Documentary Evidence for Petitioners).*[55]

In the Resolution[56] dated February 27, 2014, the Court admitted all the exhibits offered by respondent in his *Formal Offer of Evidence.* The Court likewise admitted petitioners' exhibits in their *Supplemental Formal Offer of Documentary Evidence.* In the same Resolution, the Court ordered the parties to file their respective memoranda. On March 12, 2012, petitioners filed their *Memorandum*[57]; while respondent filed his *Memorandum*[58] on March 20, 2014.

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[45] Docket – Vol. II, pp. 551 to 556.
[46] Docket – Vol. II, pp. 620 to 624.
[47] Docket – Vol. II, pp. 648 to 652.
[48] Docket – Vol. II, pp. 733 to 737
[49] Docket – Vol. II, pp. 761 to 765.
[50] Minutes of Hearing held on January 16, 2014, Docket – Vol. II, pp. 708 to 709.
[51] Docket – Vol. II, p. 680
[52] Docket – Vol. II, pp. 847 to 857.
[53] Docket – Vol. II, pp. 810 to 817.
[54] Docket – Vol. II, pp. 870 to 883.
[55] Docket – Vol. II, pp. 888 to 890.
[56] Docket – Vol. II, pp. 895 to 896.
[57] Docket – Vol. II, pp. 899 to 988.
[58] Docket – Vol. III, pp. 1034 to 1066.

In the Resolution[59] dated April 22, 2014, the Court granted petitioner's *Urgent Motion for the Suspension of Collection of Taxes*; and ordered the CIR to desist from collecting the deficiency tax assessments. In the said Resolution, the Court noted that the amount sought to be collected was way beyond petitioners' net worth, since petitioner EDP's Statement of Assets, Liabilities and Net Worth (SALN), only amounted to ₱1,185,984,697.00. Considering that petitioners still needed to cover the cost of their daily subsistence, the Court held that the collection of the total amount of ₱3,298,514,894.35 (deficiency income tax and VAT) would be highly prejudicial to their interest and should thus be suspended. The Court, however, found no legal basis to direct petitioners to deposit less than the disputed amount. Thus, the Court ruled that the suspension of collection shall be subject to petitioners' depositing a cash bond in the amount of ₱3,298,514,894.35 or posting of a GSIS bond or a bond from other reputable surety company duly accredited by the Supreme Court, in the amount equivalent to 1½ of the amount being collected or ₱4,947,772,341.53.

On April 29, 2014, petitioners filed a *Motion for Partial Reconsideration (of the Resolution dated 22 April 2014 with Application to Dispense with or Reduce the Bond and Prayer for Extension of Time to Post Bond, if required),*[60] praying that the Court dispense with the requirement of depositing or posting bond; or in the alternative, require petitioners to deposit or post bond corresponding to a reasonable amount. Petitioners likewise prayed that they be granted an extension of thirty (30) days to deposit or post the required cash or surety bond.

On May 26, 2014, respondent filed his *Opposition (Re: Motion for Partial Reconsideration dated 29 April 2014)*[61]; while petitioners filed their *Reply*[62] on June 13, 2014.

In the Resolution dated July 11, 2014,[63] the Court denied petitioners' *Motion* and directed petitioners to deposit a cash bond in the amount of ₱3,289,514,894.35 or to post a GSIS bond or bond from a reputable surety company duly accredited by the Supreme Court in the amount of ₱4,947,772,341.53. In the same Resolution, the Court granted petitioners' "*Request for extension of Time to Post*

[59] Docket – Vol. III, pp. 1073 to 1082.
[60] Docket – Vol. III, pp. 1159 to 1180.
[61] Docket – Vol. III, pp. 1406 to 1412.
[62] Docket – Vol. III, pp. 1428 to 1436.
[63] Docket – Vol. III, pp. 1462 to 1470.

Bond" and allowed petitioners an extension of thirty (30) days within which to deposit or post the required bond.

Petitioners' Amended Petition for Review

On May 23, 2014, petitioners filed a *Motion for Leave to Amend Petition for Review dated July 25, 2013*[64], with attached ***Amended Petition for Review***[65], stating that during the course of the hearings of their *Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax,* they became aware of irregularities in respondent's observance of administrative procedures leading to the issuance of the LOA which affected the validity of the disputed assessment in this case. Thus, petitioners prayed that the Court allow them to amend their *Petition for Review* to include the allegations and arguments against the validity of the assessment.

On July 1, 2014, respondent filed a *Motion for Leave to Admit Attached Comment*[66], with attached *Comment/Opposition*[67] to the *Amended Petition for Review,* stating that his *Comment* was not filed on time due to other legal work of equal importance and preparation of several pleadings and trials that respondent's counsels had to attend to, and aggravated by the resignation of two lawyers from the Litigation Division. In his *Comment/Opposition*, respondent argued that the proposed amendments would alter the theory of the case for respondent; that petitioners are barred from any amendments to the *Petition* considering that trial has already began, *albeit* on ancillary matters; and that other incidental matters relative to the assessment were already deemed waived by petitioners. Further, respondent averred that the *Motion* is dilatory and would only delay the proceedings of the case.

On July 11, 2014, petitions filed their *Motion for Leave to File Reply.*[68] Thereafter, on July 17, 2014, petitioners filed their *Reply (To Respondent's Comment/Opposition dated 30 June 2014*),[69] stating that respondent will not be prejudiced by the proposed amendment of the original *Petition*; and that petitioners are not estopped from contesting the validity of the deficiency income tax assessments.

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[64] Docket – Vol. III, pp. 1226 to 1228.
[65] Docket – Vol. III, pp. 1229 to 1272.
[66] Docket – Vol. III, pp. 1449 to 1453.
[67] Docket – Vol. III, pp. 1455 to 1460.
[68] Docket – Vol. III, pp. 1471 to 1473
[69] Docket – Vol. III, pp. 1474 to 1482

In the Resolution[70] dated July 22, 2014, the Court granted respondent's *Motion for Leave to Admit Attached Comment* and petitioners' *Motion for Leave to file Reply*; and admitted respondent's *Comment* and petitioners' *Reply*. In the same Resolution, the Court submitted petitioners' *Motion for Leave to Amend Petition for Review* for resolution.

In the Resolution dated August 22, 2014,[71] the Court granted petitioners' *Motion for Leave to Amend Petition for Review* and admitting petitioners' *Amended Petition for Review* dated May 20, 2014. The Court ruled that the admission of the *Amended Petition for Review* will serve the higher interest of substantial justice as this would provide the best opportunity for all issues between the parties to be thoroughly threshed out and the rights of all parties finally determined, and thus, will enable the Court to resolve the actual merits of the case in the most just, expeditious and inexpensive manner. In the same Resolution, the Court directed respondent to file his Amended Answer, within ten (10) days from notice.

On September 22, 2014, respondent filed his *Motion for Reconsideration (Re: Resolution dated August 22, 2014)*[72], arguing that the Court erred in granting petitioners' *Motion* to amend the original *Petition* on the ground that the proposed amendments may be considered as new allegations which tend to pursue a new or alternative manner of invoking the jurisdiction of the Court. According to respondent, while amendments are allowed in the interest of justice, the same is not allowed where the Court had no jurisdiction over the original action and the purpose of the amendment is to confer jurisdiction upon the Court.

On October 8, 2014, petitioners filed their *Comment/Opposition (To Motion for Reconsideration [Re: Resolution dated 22 August 2014])*[73], stating that the arguments raised by respondents are *pro forma*; and that respondent has not alleged or shown any new or compelling reason to justify the reversal of the Resolution dated August 22, 2014.

In the Resolution[74] dated October 24, 2014, the Court denied respondent's *Motion for Reconsideration* for lack of merit. The Court

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[70] Docket – Vol. III, p. 1486.
[71] Docket – Vol. IV, pp. 1594 to 1600.
[72] Docket – Vol. IV, pp. 1604 to 1608.
[73] Docket – Vol. IV, pp. 1627 to 1632.
[74] Docket – Vol. IV, pp. 1646 to 1649.

ruled that the arguments raised by respondent in his *Motion* are mere rehash of the issues and arguments which have been analyzed and passed upon by the Court; and that respondent failed to raise new maters which would warrant the reconsideration of the Resolution dated August 22, 2014. In the same Resolution, the Court gave respondent a fresh period of ten (10) days from notice to file an Amended Answer.

Respondent's Motion for Early Resolution on the Issue of Jurisdiction.

On November 13, 2014, respondent filed an *Omnibus Motion (For Early Resolution on the Issue of Jurisdiction of this Honorable Court and to Suspend the Period to file Answer to the Amended Petition for Review)*[75] arguing that the Court has no jurisdiction over the instant *Petition* since the FDDA had already become final, executory and demandable; and that to require a full blown trial that enquires on the validity and correctness of the assessment without resolving first the issue on jurisdiction is contrary to procedural order.

On December 9, 2014, petitioners filed their *Comment/Opposition (To Omnibus Motion [For Early Resolution on the Issue of Jurisdiction of this Honorable Court and to Suspend the Period to file Answer to the Amended Petition for Review])*[76] alleging that dispensing with the trial will only further delay the final disposition of the case.

In the Resolution[77] dated January 27, 2015, the Court denied respondent's *Omnibus Motion for Early Resolution on the Issue of Jurisdiction* and ruled that the Court has jurisdiction over the instant case and that the *Petition for Review* was filed on time.

On February 12, 2015, respondent filed his *Motion for Reconsideration*[78]. Petitioners then filed their *Comment/Opposition*[79] on March 2, 2015; while respondent filed his *Reply*[80] thereto on March 16, 2015. In the Resolution[81] dated March 19, 2015, the First

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[75] Docket – Vol. IV, pp. 1671 to 1682.
[76] Docket – Vol. IV, pp. 1702 to 1709.
[77] Docket – Vol. IV, pp. 1748 to 1765.
[78] Docket – Vol. IV, pp. 1786 to 1794.
[79] Docket – Vol. IV, pp. 1801 to 1814.
[80] Docket – Vol. IV, pp. 1836 to 1840.
[81] Docket – Vol. IV, p. 1846.

Division submitted respondent's *Motion for Reconsideration* for resolution.

On April 10, 2015, respondent filed an *Omnibus Motion (For Leave to Present Evidence and to Defer Resolution of the Case)*[82] praying that the Court grant his leave and allow him to present his witness to prove the relevance of petitioners' receipt of the PAN and FLD and for the Court to defer the resolution of his *Motion for Reconsideration* filed on February 12, 2015.

Petitioners filed their *Comment/Opposition (to Respondent's Omnibus Motion [For Leave to Present Evidence and to Defer the Resolution of the Case)*[83] on April 27, 2015 stating that petitioners' receipt of the PAN and FLD does not establish the validity of the service of the FDDA upon petitioners, nor the date when petitioners actually received it; and that respondent should be barred from filing any pleadings or motions that would delay the resolution of respondent's *Motion for Reconsideration*.

In the Resolution[84] dated May 28, 2015, the Court granted respondent's *Omnibus Motion* and ruled that there can be no concluding determination of the controversy if the Court will ignore the evidence sought to be presented by respondent pertaining to the alleged relevance of petitioners' receipt of the PAN and FLD to the resolution of respondent's *Motion for Reconsideration*. Thus, the Court set aside the Resolution dated March 19, 2021 submitting respondent's *Motion for Reconsideration* for resolution and set the case for hearing for the presentation of respondent's additional witness.

During the said hearing[85], respondent presented as witness, Amelita R. Aquino[86], Intelligence Officer at the NID. She testified that she served a copy of the FLD/FAN to petitioners at the House of Representatives *via* registered mail, and that the same was received by Erwin Jamora on June 28, 2012. During cross-examination, she, however, admitted that she does not know the actual signature of Erwin Jamora since she did not see him sign the receiving copy of the FLD and that she does not know him personally.

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[82] Docket – Vol. IV, pp. 1847 to 1850.
[83] Docket – Vol. IV, pp. 1870 to 1878.
[84] Docket – Vol. IV, pp. 1880 to 1882.
[85] Minutes of Hearing held on September 8, 2015, Docket – Vol. IV, pp. 1917 to 1922.
[86] Exhibit "R-22", Vol. 14, Docket – Vol. IV, pp. 1899 to 1903.

G.R. No. 213394 – Spouses Emmanuel Pacquiao and Jinkee J. Pacquiao vs the Court of Tax Appeals – First Division and the Commissioner of Internal Revenue

Meanwhile, petitioners filed before the Supreme Court a *Petition for Certiorari (With Urgent Application for the Issuance of a Status Quo Ante Order/Temporary Restraining Order and/or Writ of Preliminary Injunction)*, docketed as **G.R. No. 213394**, assailing the Resolutions dated April 22, 2014 and July 11, 2014, issued by the First Division of this Court, which denied petitioners prayer for dispensation or reduction of bond. In their *Petition for Certiorari*, petitioners pray, among others, that a Decision be issued directing the CTA to dispense with or reduce the required cash deposit or bond. A copy of the said *Petition for Certiorari* was received by the Court on August 4, 2014.[87]

On August 22, 2014, the Court received a *Temporary Restraining Order*[88] dated August 18, 2014 issued by the Supreme Court Third Division in G.R. No. 213394, enjoining the CTA First Division from implementing the Resolutions dated April 22, 2014 and July 11, 2014 insofar as it requires petitioners to either deposit a cash bond in the amount of ₱3,298,514,894.35 or to post a surety bond in the amount of ₱4,947,772,341.53, as a condition for the suspension of collection of deficiency income taxes and VAT against petitioners for the years 2008 and 2009. Respondent was likewise enjoined from issuing, executing, enforcing, implementing or otherwise giving effect to any Warrant of Distraint and/or Levy, Warrants of Garnishment, and Notice of Tax Lien, and from attempting to collect any income tax and VAT assessments against petitioners for taxable years 2008 and 2009, as well as any increments thereon, and from doing any and all acts relative thereto.

On April 6, 2016, the Supreme Court promulgated the *Decision*[89] in G.R. No. 213394, which partially granted petitioners' *Petition for Certiorari*. The Supreme Court issued a *Writ of Preliminary Injunction*[90], enjoining the implementation of the Resolutions dated April 22, 2014 and July 11, 2014 of the CTA First Division. In the said *Decision*, the Supreme Court **remanded** the

[87] Docket – Vol. IV, pp. 1489 to 1561.
[88] Docket – Vol. IV, pp. 1591 to 1592.
[89] Docket – Vol. V, pp. 2129 to 2154.
[90] Docket – Vol. V, pp. 2127 to 2128.

case to the CTA First Division and ordered the Court to conduct a preliminary hearing to determine whether the dispensation or reduction of the required cash deposit or bond is proper for purposes of restraining the collection of deficiency taxes assessed against petitioners.

Remand to the CTA Division

During the hearing held on April 28, 2016,[91] the Court issued a Resolution directing both parties to submit a manifestation on how they will present their respective evidence to comply with the directives of the Supreme Court.

On May 19, 2016, the First Division issued a Resolution[92] holding in abeyance the resolution of all pending incidents in this case in deference to the directives issued by the Supreme Court in its Decision in *Spouses Emmanuel Pacquiao and Jinkee J. Pacquiao vs the Court of Tax Appeals – First Division and the Commissioner of Internal Revenue* in G.R. No. 213394 and setting the case for Clarificatory Hearing on May 24, 2016 to thresh out the matters pertaining to the parties' presentation of evidence as directed by the Supreme Court.

During the Clarificatory Hearing held on May 24, 2016, the Court directed both parties to submit their respective memoranda of evidence. The Court likewise stated that the order of the Court for the submission of a manifestation as contained in the Resolution dated April 28, 2016 is considered moot.[93]

In compliance with the Order dated May 24, 2016, petitioners filed their *Memorandum of Evidence* on June 8, 2016.[94] On the other hand, respondent filed his *Memorandum of Evidence* on June 13, 2016[95], *Amended Memorandum of Evidence*[96] on June 21, 2016, and *Second Amended Memorandum of Evidence*[97] on September 26, 2016.

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[91] Docket – Vol. V, pp. 2159 to 2160
[92] Docket – Vol. V, pp. 2180 to 2182
[93] Minutes of the Hearing held on May 24, 2016, Docket- Vol. V. pp. 2183 to 2184.
[94] Docket – Vol. V., pp. 2208 to 2249.
[95] Docket – Vol. V., pp. 2256 to 2259.
[96] Docket – Vol. V, pp. 2270 to 2280.
[97] Docket – Vol. V, pp. 2386 to 2392.

On May 30, 2016, petitioners filed a *Motion to Lift Notices of Tax Lien annotated on Properties Registered in the Name of Petitioners.*[98] In the said motion, petitioner informed this Court that respondent caused the annotation of a *Notice of Tax Lien*[99] against petitioners as Entry No. 2015000067 on a parcel of land in the name of Emmanuel Dapidran Pacquiao covered by Transfer Certificate No. 147-T-115448.[100]

On June 13, 2016, respondent filed an *"Omnibus Motion (1. To Resolve Pending Motion for Reconsideration and 2. To Defer Preliminary Hearing)",*[101] praying that its *Motion for Reconsideration*[102] filed on February 12, 2015 be resolved before conducting the Preliminary Hearing. Petitioners filed their *Comment/Opposition*[103] thereto on June 30, 2016.

In the Resolution[104] dated August 22, 2016, the Court denied respondent's *Omnibus Motion (1. To Resolve Pending Motion for Reconsideration and 2. To Defer Preliminary Hearing)* and ruled that the issues involved in respondent's *Motion for Reconsideration* and the matters to be heard in the preliminary hearing are closely related and intertwined, thus requiring a joint resolution of all the issues raised in this case. In the same Resolution, the Court ordered respondent to file its Formal Offer of Evidence in relation to his *Motion for Reconsideration*[105] filed on February 12, 2015. The Court likewise set the case for Preliminary Hearing on the issue of whether petitioners should be required to post the surety bond on September 15, 2016.

On September 5, 2016[106], petitioners filed a *Request for Stipulation*; while respondent filed his *Comment*[107] thereto on October 17, 2016.

On September 8, 2016, respondent filed an *Omnibus Motion (1. For Reconsideration of the Resolution dated August 22, 2016, and 2. For Clarification),*[108] praying for the reconsideration of the Resolution

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[98] Docket – Vol. V, pp. 2188 to 2192.
[99] Exhibit "P-62-A", Docket- Vol. V, p. 2493.
[100] Exhibit "P-62", Docket- Vol. V, pp. 2489 to 2492.
[101] Docket – Vol. V, pp. 2262 to 2268.
[102] Docket – Vol. IV, pp. 1786 to 1796.
[103] Docket – Vol. V, pp. 2287 to 2292.
[104] Docket – Vol. V, pp. 2307 to 2314.
[105] Docket – Vol. IV, pp. 1786 to 1794.
[106] Docket – Vol. V, pp. 2318 to 2321.
[107] Docket – Vol. V, pp. 2418 to 2421.
[108] Docket – Vol. V, pp. 2363 to 2367.

dated August 22, 2016 and for clarification on the following: (1) whether a joint hearing will be conducted; (2) whether respondent's evidence will still be incorporated in the joint hearing.

On September 14, 2016,[109] the Court issued a Resolution holding in abeyance the resolution of petitioners' *Motion to Lift Notices of Tax Lien Annotated on Properties Registered in the Name of Petitioner* until the termination of the preliminary hearing. The Court ruled that the lifting of the notices of tax lien is dependent upon the final outcome of the preliminary hearing and thus, to avoid piece meal resolution of pending incidents in the case, the Court resolved to hold in abeyance the resolution of petitioners' motion in order to arrive at a comprehensive resolution of all pending unresolved matters in this case.

Petitioners filed a *Motion for Reconsideration (of the Resolution dated 14 September 2016)* on October 3, 2016[110], which was denied in the Resolution dated January 24, 2017.[111]

Meanwhile, respondent filed before the Supreme Court a *Manifestation with Urgent Motion for Clarification*, seeking clarification of the Supreme Court Decision dated April 6, 2016 in G.R. No. 213394 on whether the Preliminary Hearing for the determination of the bond should take precedence notwithstanding the issue on the jurisdiction of the CTA which is pending before the First Division of the CTA. A copy of the said *Manifestation with Urgent Motion for Clarification* was received by the Court on July 29, 2016. [112]

On February 3, 2017,[113] the Court received a *Notice* from the Supreme Court stating that a Resolution dated December 7, 2016 was issued by the Supreme Court Second Division in **G.R. No. 213394** in connection with the *Manifestation with Urgent Motion for Clarification* filed by respondent. In the said Resolution, the Supreme Court ruled, among others, that the determination of which issue must first be resolved – whether (a) the resolution of the motion to dismiss or (b) the propriety and the amount of bond or dispensation thereof – is a matter that should be addressed to the sound discretion of the CTA; and that the tax court should be afforded the opportunity to

[109] Docket – Vol. V, pp. 2372 to 2375
[110] Docket – Vol. V, pp. 2400 to 2407
[111] Docket – Vol. VI, pp. 2506 to 2509.
[112] Docket – Vol. V, pp. 2296 to 2302.
[113] Docket – Vol. VI, pp. 2518 to 2522.

exercise such discretion and determine how it should proceed to resolve the case before it.

Preliminary Hearing on the issue of whether petitioners should be required to post the bond.

During the **Preliminary Hearing**, petitioners adopted the testimonies of two of its witnesses in the previous proceedings *(i.e., hearing on petitioners' Motion to Suspend Collection of Tax),* particularly (1) Richard Querido; and (2) RO Leonesto Bernal of the NID.[114]

On December 8, 2016, petitioners filed *a Formal Offer of Evidence for Petitioner (Preliminary Hearing regarding the Bond Requirement for Suspension of Collection of Taxes) with Motion for Leave to Correct Marking of Evidence,*[115] *with* respondent's *Comment (Re: Petitioners' Formal Offer of Evidence)* filed on February 9, 2017.[116] The Court admitted petitioners' evidence in the Resolution dated April 3, 2017.[117]

On the other hand, respondent adopted the testimonies of the following witnesses: 1) Virma C. Clemente, Chief, Supervisor at the NID; (2) Amelita R. Aquino, Intelligence Officer III at the NID; (3) Cynthia M. Catolico, RO III at ARMD; (4) Ferdinand G. Malonzo, Intelligence Officer at NID; (5) Lourdes M. Sante, RO II at the NID; and (6) Ma. Veronica Dela Cruz, an LBC employee.[118]

Further, respondent presented the following additional witnesses: (1) Arnel C. Bato[119], Mail Courier I, Records Management Service, House of Representatives, Batasan Hills, Quezon City and (2) RO Leonesto D. Bernal of the NID.[120]

On September 18, 2017, respondent filed its *Formal Offer of Evidence (Preliminary Hearing for Determination of Bond Incidental to*

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[114] *Memorandum of Evidence*, Docket – Vol. V, pp. 2208 to 2249; Minutes of Hearing held on September 15, 2016, Docket – Vol. V, pp. 2376 to 2377.
[115] Docket – Vol. V, pp. 2438 to 2472
[116] Docket – Vol. VI, pp. 2528 to 2540.
[117] Docket – Vol. VI, pp. 2552 to 2553.
[118] *Second Amended Memorandum of Evidence,* Docket – Vol. V, pp. 2386 to 2392; Minutes of Hearing held on September 15, 2016, Docket – Vol. V, pp. 2376 to 2377.
[119] Exhibit "R-25", Docket – Vol. IV, pp. 2115 to 2120.
[120] Exhibit "R-31", Docket – Vol. IV, pp. 2596 to 2620.

Suspension of Taxes).[121] Petitioners filed their *Comment/Objections to Respondent's Formal Offer of Evidence* on September 22, 2017.[122]

In the Resolutions dated November 2, 2017[123] and February 15, 2018,[124] the Court admitted respondent's evidence and required the parties to file their respective memoranda. Petitioners' *Memorandum* was filed on April 2, 2018[125] while respondent's *Memorandum* was filed on May 11, 2018.[126]

On July 27, 2018, the Court issued a Resolution[127] dispensing with the bond requirement under Section 11 of Republic Act No. 1125 and finding that respondent failed to comply with the necessary requirements under pertinent laws in assessing and collecting the subject deficiency taxes. The Court likewise directed respondent (1) to cease and desist from implementing the FDDA and from collecting the subject deficiency tax assessments issued against petitioners for taxable years 2008 and 2009; and (2) to lift the Warrants of Distraint and/or Levy and Garnishment, pending the final disposition of this case. In the same Resolution, the Court granted petitioners' "*Motion to Lift Notices of Tax Lien Annotated on Properties Registered in the Name of Petitioners*"; and ordered the cancellation and withdrawal of the *Notice of Tax Lien* dated January 8, 2015, with Entry No. 2015000067, served at the Register of Deeds, General Santos, for Transfer Certificate of Title No. 147-T-115448. In the same Resolution, the First Division denied respondent's *Motion for Reconsideration* filed on February 12, 2015 for lack of merit and reiterated its ruling in the Resolution dated January 27, 2015 that the Court has jurisdiction over the instant case and that the *Petition for Review* was timely filed.

On August 22, 2018, respondent filed a *Motion for Reconsideration Re: Resolution dated 27 July 2018*[128] praying for the reconsideration, reversal and setting aside of the First Division's Resolution dated July 27 2018. Petitioners then filed their *Opposition (To: Respondent's Motion for Reconsideration dated 20 August 2018)* on September 14, 2018.[129]

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[121] Docket – Vol. VII, pp. 3151 to 3165.
[122] Docket – Vol. VII, pp. 3169 to 3174.
[123] Docket – Vol. VII, pp. 3183 to 3185.
[124] Docket – Vol. VII, pp. 3211 to 3213.
[125] Docket, Vol. VII, pp. 3223 to 3280.
[126] Docket, Vol. VII, pp. 3310 to 3350.
[127] Docket – Vol. VII, pp. 3403 to 3440.
[128] Docket – Vol. VIII, pp. 3931 to 3954.
[129] Docket – Vol. VIII, pp. 4029 to 4051.

Petitioners' Motion for Summary Judgment

Meanwhile on August 24, 2018, petitioners filed a *Motion for Summary Judgment*[130] praying that the Court render a summary judgment in the instant case (1) granting their *Petition for Review;* (2) declaring the FLD, FAN, FDDA, PCL, FNBS, and all other acts and issuances made by respondent as null and void; and (3) canceling the assessments for deficiency income tax for taxable years 2008 and 2009 in the aggregate amount of ₱2,229,020,905.50 for having been issued without factual and legal bases.

Respondent filed his *Opposition Re: Petitioner's Motion for Summary Judgment dated 24 August 2018* on September 6, 2018.[131] A *Reply (To: Opposition dated 6 September 2018*) was then filed by petitioners on September 12, 2018.[132]

Subsequently, in view of the reorganization of the three (3) divisions of the Court[133], this case was transferred to the Third Division of this Court, pursuant to the Order dated September 25, 2018.[134]

A *Motion for Leave of Court to file a Rejoinder (To Petitioner's Reply dated 12 September 2018)*[135] was then filed by respondent on September 27, 2018, stating that petitioners' *Reply* contained erroneous and misleading allegations and arguments that make it imperative for respondent to file a rejoinder in order to correct the allegations and assist the Court in resolving petitioners' *Motion for Summary Judgment.*

On October 4, 2018, petitioners filed their *Opposition (To: Respondent's Motion for Leave of Court to File Rejoinder dated 26 September 2018).*[136]

In the Resolution dated October 9, 2018,[137] the Court submitted for resolution the following: (1) petitioners' *Motion for Summary*

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[130] Docket – Vol. VIII, pp. 3474 to 3502.
[131] Docket – Vol. VIII, pp. 3958 to 3976.
[132] Docket – Vol. VIII, pp. 3978 to 3996.
[133] CTA Administrative Circular No. 02- 2018 dated September 18, 2018.
[134] Docket – Vol. VIII, p. 4054-A.
[135] Docket – Vol. IX, pp. 4055 to 4057.
[136] Docket – Vol. IX, pp. 4059 to 4065.
[137] Docket – Vol. IX, pp. 4069 to 4070.

Judgment, respondent's (2) *Motion for Leave of Court to File Rejoinder*; and (3) *Motion for Reconsideration Re: Resolution dated 27 July 2018.*

Meanwhile, on October 12, 2018, respondent filed a *Motion for Extension of Time to File Reply (To Petitioner's Opposition dated 14 September 2018)*,[138] which was granted by the Court in the Resolution dated October 19, 2018.[139] On October 22, 2018, respondent again filed an *Urgent Motion for Additional Time to File Reply (To Petitioner's Opposition dated 14 September 2018),*[140] which was granted by the Court in the Resolution dated October 25, 2018.[141]

On October 24, 2018, respondent filed its *Reply Re: Petitioner's Opposition [To: Respondent's Motion for Reconsideration dated 20 August 2018]*[142] and its *Rejoinder Re: Petitioner's Reply dated 12 September 2018.*[143]

In the Resolution dated December 21, 2018[144], the Court denied both respondent's *Motion for Reconsideration Re: Resolution dated 27 July 2018* which was filed on August 22, 2018 and petitioners' *Motion for Summary Judgment* which was filed on August 24, 2018, for lack of merit. As regards respondent's *Motion for Reconsideration*, the Court ruled that the arguments therein are mere reiterations of matters which have already been considered and passed upon by the Court in the Resolution dated July 27, 2018.

With respect to petitioners' *Motion for Summary Judgment*, the Court ruled that petitioners failed to prove the absence of a genuine issue; and that it is premature for the Court to resolve the issues raised by the parties in their respective pleadings without giving them the opportunity to present their evidence in a full-blown trial.

On January 23, 2019, petitioners filed their *Motion for Partial Reconsideration (of the Resolution dated 21 December 2018)*[145], seeking partial reconsideration of the Court's Resolution dated December 21, 2018 insofar as the denial of their *Motion for Summary*

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[138] Docket – Vol. IX, pp. 4071 to 4074.
[139] Docket – Vol. IX, p. 4077.
[140] Docket – Vol. IX, pp. 4078 to 4081.
[141] Docket – Vol. IX, p. 4359.
[142] Docket – Vol. IX, pp. 4323 to 4333.
[143] Docket – Vol. IX, pp. 4335 to 4353.
[144] Docket – Vol. IX, pp. 4364 to 4380.
[145] Docket – Vol. IX, pp. 4418 to 4436.

Judgment is concerned. On March 1, 2019, respondent filed its *Opposition Re: Petitioner's Motion for Partial Reconsideration (of the Resolution dated 21 December 2018).*[146]

On March 18, 2019, petitioners filed their *Reply [To: Opposition (Re: Petitioner's Motion for Partial Reconsideration of the Resolution dated 21 December 2018) dated 1 March 2019].*[147]

On April 10, 2019, the Court issued a Resolution[148] denying petitioner's *Motion for Partial Reconsideration (of the Resolution dated 21 December 2018).*

G.R. No. 242265: Commissioner of Internal Revenue vs The Court of Tax Appeals – First Division and Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao

(Re: Issue on Jurisdiction of the Court)

Respondent filed a *Petition for Certiorari (with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction* before the Supreme Court, docketed as **G.R. No. 242265**. In the said *Petition for Certiorari*, respondent prayed for the reversal and setting aside of the CTA First Division's Resolutions dated January 27, 2015 and July 27, 2018, in so far as it ruled that the CTA has jurisdiction over the case. A copy of the said *Petition for Certiorari*[149] was received by the Court on October 23, 2018.

On January 12, 2019, the Supreme Court issued a Resolution dismissing the said *Petition for Certiorari* for failure of respondent to sufficiently show that any grave abuse of discretion was committed by the Court in rendering the challenged Resolutions. According to the Supreme Court, the assailed Resolutions appear to be in accord with the facts and the applicable law and jurisprudence.[150]

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[146] Docket – Vol. IX, pp. 4462 to 4470.
[147] Docket – Vol. IX, pp. 4527 to 4543.
[148] Docket – Vol. X, pp. 4894 to 4898.
[149] Docket – Vol. IX, pp. 4083 to 4115.
[150] Docket – Vol. X, p. 4910.

G.R. Nos. 245385 and 247468: ***Commissioner of Internal Revenue vs The Court of Tax Appeals – First Division and Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao / Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. Court of Tax Appeals***

(Re: Issue on Dispensation of Bond and Denial of Petitioner's Motion for Summary Judgment)

Respondent filed a *Petition for Certiorari* before the Supreme Court, docketed as **G.R. No. 245385** praying for the reversal and setting aside of the Court's Resolutions dated July 27, 2018 and December 21, 2018, in so far as the said Resolutions dispensed with the required cash deposit or bond. A copy of the said *Petition for Certiorari*[151] was received by the Court on March 12, 2019.

On the other hand, petitioners filed their *Petition for Certiorari (With Urgent Application for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)* before the Supreme Court, docketed as **G.R. No. 247468**, praying: (1) that the Resolutions dated December 21, 2018 and April 10, 2019 which denied their *Motion for Summary Judgment* be set aside; and (2) to declare petitioners entitled to a summary judgment. A copy of the said *Petition for Certiorari*[152] was received by the Court on July 31, 2019.

On July 3, 2019, the Supreme Court issued a Resolution consolidating **G.R. No. 245385** with **G.R. No. 247468**.[153]

The foregoing consolidated cases are still pending before the Supreme Court.

Proceedings during Pre-Trial and Trial of the instant case.

The Pre-Trial Conference in this case was held on September 25, 2019.[154] By agreement of both parties' counsels, they filed their

[151] Docket – Vol. IX, pp. 4473 to 4523.
[152] Docket – Vol. X, pp. 4935 to 4992.
[153] Notice from the Supreme Court received on January 10, 2020, Docket – Vol. XI, p. 5232.
[154] Minutes of the Hearing held on September 25, 2019, Docket – Vol. XI, p. 5026

Joint Stipulation of Facts and Issues on October 30, 2019,[155] which was approved by the Court in the Resolution dated November 7, 2019. Subsequently, the Pre-Trial Order dated November 20, 2019[156] was issued by the Court, and the Pre-Trial was deemed terminated.

Trial for the main case then ensued.

Both parties adopted the exhibits as well as the testimonies of their witnesses, which have already been offered and admitted during previous proceedings in this case.

As for petitioners, they adopted the testimonies of the following witnesses: (1) Richard S. Querido; (2) RO Leonesto D. Bernal of the NID; and (3) Rosanna V. San Vicente, Chief of the ARMD.

On the other hand, respondent adopted the testimonies of the following witnesses: (1) Virma C. Clemente, Chief-Supervisor at the NID; (2) Amelita R. Aquino, Intelligence Officer III at the NID; (3) RO Cynthia M. Catolico of the ARMD; (4) Intelligence Officer Ferdinand G. Malonzo of the NID; (5) RO Ma. Lourdes M. Sante of the NID; (6) Ma. Veronica Dela Cruz; (7) Arnel C. Bato; and (8) RO Leonesto D. Bernal of the NID.[157]

During trial, petitioner presented additional documentary and testimonial evidence. They presented anew Richard Querido[158].

On June 26, 2020, petitioners filed their *Formal Offer of Evidence*[159]. Respondent filed his *Comment*[160] thereto on July 17, 2020.

In the Resolution[161] dated October 8, 2020, the Court admitted petitioner's exhibits, except for the following:

1. Exhibits "P-69", "P-71", "P-75", "P-75-A", "P-75-B", "P-76", "P-77", "P-78", "P-79", "P-80", "P-85", "P-88", "P-89",

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[155] Docket – Vol. XI, pp. 5170 to 5185.
[156] Docket – Vol. XI, pp. 5204 to 5224.
[157] JSFI, Docket – Vol. XI, pp. 5170 to 5185.
[158] *Supplemental Judicial Affidavit of Richard S. Querido*, Exhibit "P-92", Docket – Vol. XI, pp. 5058 to 5074; 2nd *Supplemental Judicial Affidavit of Richard S. Querido*, Exhibit "P-93", Docket – Vol. XI, pp. 5244 to 5246.
[159] Docket – Vol. XI, pp. 5258 to 5300.
[160] Docket – Vol. XII, pp. 5521 to 5523.
[161] Docket – Vol. XII, pp. 5543 to 5544.

"P-90", and "P-91", for failure to submit the duly marked exhibits; and

2. Exhibits "P-81", "P-82", "P-83", "P-84", "P-86", and "P-87", for failure to present the originals for comparison.

On October 28, 2020, petitioners filed a *Motion for Partial Reconsideration and Tender of Excluded Evidence*[162] praying that the Court (1) partially reconsider the Resolution dated October 8, 2020; (2) admit Exhibits "P-69", "P-71", "P-75", "P-75-A", "P-75-B", "P-76", "P-77", "P-78", "P-79", "P-80", "P-85", "P-88", "P-89", "P-90", and "P-91"; (3) note petitioners' tender of excluded Exhibits "P-81", "P-82", "P-83", "P-84", "P-86", and "P-87"; and(4) include said exhibits as part of the records of the case.

On November 25, 2020, respondent filed a *Comment (on Petitioner's Motion for Partial Reconsideration and Tender of Excluded Evidence)*,[163] stating that he has no objection to the admission of Exhibits "P-69", "P-71", "P-75", "P-75-A", "P-75-B", "P-76", "P-77", "P-78", "P-79", "P-80" to "P-91", without necessarily admitting their relevancy, materiality and probative value to the issues involved in the instant case and the validity of the purposes for which they are offered.

In the Resolution dated December 1, 2020, the Court granted petitioners' *Motion for Partial Reconsideration* and admitted Exhibits "P-69", "P-71", "P-75", "P-75-A", "P-75-B", "P-76", "P-77", "P-78", "P-79", "P-80", "P-85", "P-88", "P-89", "P-90", and "P-91". The Court likewise noted petitioner's *Tender of Excluded Evidence*.

For his part, respondent presented the following additional witnesses: (1) Assistant Commissioner James H. Roldan, Head of the Enforcement and Advocacy Service of the BIR[164]; and (2) Ramoncito L. Tomeldan[165], Managing Director of Manila Standard, who appeared pursuant to the *Subpoena Duces Tecum and Ad Testificandum*[166] issued on January 5, 2021.

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[162] Docket – Vol. XII, pp. 5545 to 5548.
[163] Docket – Vol. XII, pp. 5594 to 5596.
[164] *Judicial Affidavit of Assistant Commissioner James H. Roldan*, Exhibit "R-48", Docket – Vol. XI, pp. 5190 to 5197.
[165] Minutes of Hearing held on January 27, 2021, Docket – Vol. XII, p. 5675.
[166] Docket – Vol. XII, p. 5641.

On February 8, 2021, respondent filed his *Formal Offer of Evidence*[167]. On February 19, 2021, petitioners filed their *Comment/Objection to Respondent's Formal Offer of Evidence.*[168]

In the Resolution[169] dated June 8, 2021, the Court admitted respondent's exhibits, except for the following:

1. Exhibit "R-24-1", for not being found in the records;
2. Exhibit "R-39", for failure to present the original for comparison; and
3. Exhibit "R-43-5", for failure of the exhibit formally offered and identified in the Judicial Affidavit to correspond to the document actually marked.

In view of the filing of the *Memorandum for Petitioners*[170] and respondent's *Memorandum*[171] on October 27, 2021, the instant case was submitted for decision on November 24, 2021.[172]

Hence, this decision.

THE ISSUES

The parties stipulated the following issues[173] for this Court's resolution, *to wit*:

> "(1) Whether or not the Deficiency Tax Assessments are null and void for having been issued in contravention of petitioners' Constitutional right to due process;
>
> (2) Whether the Honorable Court can validly examine and adjudicate on the CIR's exercise of his exclusive determination to issue Letters of Authority;
>
> (3) Whether Petitioners are liable for deficiency income tax and value-added tax for taxable years 2008 and 2009 in the aggregate amount of

[167] Docket – Vol. XII, pp. 5680 to 5705.
[168] Docket – Vol. XII, pp. 5712 to 5730.
[169] Docket – Vol. XII, pp. 5772 to 5773.
[170] Docket – Vol. XII, pp. 5862 to 5930.
[171] Docket – Vol. XII, pp. 5934 to 5970.
[172] Docket – Vol. XII, p. 5974.
[173] Stipulations of Issues, *JSFI*, Docket – Vol. XI, pp. 5175 to 5176.

₱2,261,217,439.92 plus 50% surcharge, deficiency and delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997."

Petitioners' arguments:

Petitioners argue that respondent's failure to comply with the requirements of RMO No. 27-2010 on the issuance of LOAs to conduct fraud investigation for multiple years from 1995 to 2009 renders the resulting assessment null and void. According to petitioners, respondent failed to conduct a preliminary investigation that would establish *prima facie* evidence of fraud or tax evasion.

Petitioners likewise maintain that the LOAs are void because the 15-year period is arbitrary and excessive. Allegedly, as LOA which covers more than one year is generally considered void.

Further, it is petitioners' position that the evidence gathered during the alleged preliminary investigation lacked substance; that the investigation officers did not attempt to verify the information coming from third party sources; and that they relied on unverified magazines, newspapers and official websites of different entities which lacked factual foundation top serve as basis for further proceedings against the taxpayer.

As regards the authority of the revenue officers, petitioners aver that RO Ma. Lourdes Sante, who participated in the audit of petitioners' 2008 and 2009 books of accounts did not have the requisite authority.

Petitioners likewise maintain that respondent failed to issue a notice of informal conference prior to the issuance of the deficiency tax assessment against petitioners.

Allegedly, the manner by which respondent issued the subject FLD violated their right to due process considering that : the FLD failed to indicate a definite due date and amount payable; it did not explain the particular facts used as basis for rejecting their protest; and the assessment contained in the FLD lacked sufficient foundation.

In addition, petitioners assert that issuance of the FDDA, PCL, FNBS and the WDL and Garnishment violated their right due process. According to petitioners, the WDL and Garnishment were prematurely executed and that petitioners were not furnished with a copy of the said warrants.

Respondent's counter-arguments:

The CIR counter-argues that in view of petitioners' failure to timely file an appeal, the FDDA has become final, executory, and demandable. Hence, the Court did not acquire jurisdiction over the case.

According to the CIR, the FDDA was validly served to petitioners through personal service and through mail; and assuming that both personal service and service by mail are invalid, the period within which to file judicial relief should be counted from the date when petitioners' representative obtained knowledge of the issuance of the FDDA.

The CIR likewise contends that petitioners were accorded due process. Contrary to petitioners' allegations, petitioners received the NIC and the subject assessment notices; that the assessment issued against petitioners is correct and based on facts and law; and that petitioners were able to intelligently argue the details of these assessment.

Further, it is the CIR's position that the use of the best evidence obtainable for purposes of tax assessment is valid; and that it was petitioners' failure to present the accounting records which compelled the revenue officers to resort to other evidence.

Allegedly, there was *prima facie* finding of fraud and tax evasion against petitioners.

THE COURT'S RULING

The Court finds merit in the instant *Petition for Review.*

The Court has jurisdiction over the present case.

In his *Memorandum*, respondent once again raises the issue of jurisdiction. Allegedly, the FDDA was validly served to petitioners

through personal service and through mail; and that assuming that both personal service and service by mail are invalid, the period within which to file judicial relief should be counted from the date when petitioners' representative obtained knowledge of the issuance of the FDDA.

It bears noting, however, that a review of the records reveals that the issue on the jurisdiction of the Court has already been extensively discussed and resolved in the Resolution[174] dated January 27, 2015, *to wit*:

> "Section 3 of Revenue Regulations No. (RR) 12-99[175] reads, in part, as follows:
>
> 'SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*—
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.6 *Administrative Decision on a Disputed Assessment.* — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, ***otherwise, the decision shall be void*** (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment, and (b) that the same is his ***final decision***.
>
> 3.1.7 *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received

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[174] Docket – Vol. IV, pp. 1748 to 1765.

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

> by the taxpayer. If the same is personally served on the taxpayer **or his duly authorized representative** who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof).'

As can be gleaned from the foregoing provision, it can easily be inferred that personal service of the FDDA may be made on the taxpayer himself, or his **duly** authorized representative. Needless to state, such service on the taxpayer's duly authorized representative is deemed service to the taxpayer, regardless of where such representative may be found, **so long as such representative is clearly and duly authorized by the same taxpayer**.

xxx xxx xxx.

In this case, respondent strongly insists that said FDDA was received by petitioners on May 20, 2013 via personal service, through a certain Mr. Erwin Jamora – the supposed "duly authorized representative" of petitioners.

However, the authority of Mr. Jamora to receive the subject FDDA was never clearly established by respondent. Specifically, the testimonies of respondent's witnesses regarding the supposed authority of Mr. Jamora fail to convince Us that the latter was indeed **duly** authorized to receive the said FDDA on behalf of petitioners.

In this connection, it must be emphasized that the word "duly" has acquired a fixed legal meaning, and **when used before any word implying action, it means**

that the act was done properly, regularly, and according to law, or some rule of law.[176] Since in the instant case, the pertinent legal provision being followed by the word *"duly"* is *"authorized representative"*, the law or rule of law to be considered are the essential elements of agency, which are stated in the case of *Rallos vs. Felix Go Chan & Sons Realty Corporation, et al.* [177] (hereinafter referred to as the "*Rallos* case"), to wit:

> xxx. The essential elements of agency are: (1) there is consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agents *(sic)* acts as a representative and not for himself; and (4) the agent acts within the scope of his authority.
>
> Agency is basically *personal*, *representative*, and *derivative* in nature. The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of the authority. *Qui facit per alium facit per se*. 'He who acts through another acts himself.'"
>
> Applying the foregoing pronouncements to the instant case, respondent should have established that petitioners' act of authorizing Mr. Jamora to receive the subject FDDA was done properly, regularly, and in accordance with law or some rule of law (*i.e.*, the laws pertaining to contracts of agency).
>
> xxx xxx xxx

Be that as it may, even granting that Mr. Jamora was indeed an agent of petitioners, his act cannot be deemed as performed within his authority, in the absence of a written power of attorney executed by petitioners, pursuant to Article 1900 of the Civil Code of the Philippines,[178] *viz*:

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[176] *Anis, et al. vs. Contreras, et al.*, G.R. No. 35796, August 8, 1931.
[177] G.R. No. L-24332, January 31, 1978.
[178] Republic Act No. 386.

> "Art. 1900. **So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written**, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent." *(Emphasis and underscoring supplied)*

It is clear from the testimony of respondent's witness, Ms. Clemente, that the BIR does not have *"anything in writing from Congressman Pacquiao which authorizes Mr. Jamora to receive notices from the BIR on his behalf"*. Thus, there being no written power of attorney from which this Court can verify the terms thereof, We cannot conclude that the act of receiving the FDDA was within the scope of Mr. Jamora's authority, insofar as the BIR is concerned.

Finding that Mr. Jamora is not the duly authorized agent of petitioner in receiving the subject FDDA, We shall proceed to determine whether service thereof by licensed courier is valid as to effectuate receipt of the same by petitioners.

A plain reading of the aforequoted Section 3 of RR 12-99 would reveal that service of notices to the taxpayer through private courier is not prohibited under the said revenue regulations. However, the recent amendment to RR 12-99 manifests that this administrative issuance did not originally include service of said notices through private courier.

xxx xxx xxx

It is, therefore, Our considered opinion that the intent of the original text of RR 12-99 is that the taxpayer must be served only through personal service or registered mail, while service through private courier may not be deemed a valid service of the BIR notices prior to the amendment of RR 12-99. An otherwise interpretation would make the recent amendment of RR 18-2013 meaningless or may be deemed as a mere surplusage.

In this connection, it must be emphasized that it is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant.[179] In addition, it is the duty of this Court to give meaning to the amendment.[180]

Having determined the said original intent of RR 12-99, We are bound to give effect to the same. In *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,[181] the Supreme Court said:

> 'The Court is bound to effectuate the lawmakers' intent, which is the controlling factor in interpreting a statute. Significantly, this Court has held that **the soul of the law is intent**:
>
> 'The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. **Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act.** Intent is the spirit which gives life to a legislative enactment. **In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.**' *(Emphases supplied)*

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[179] *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009.
[180] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. Nos. L-48886-88, July 21, 1993.
[181] G.R. No. 160528, October 9, 2006.

In fine, service of the subject FDDA to petitioners through private courier on May 17, 2013 becomes insignificant as the same was done prior to the effectivity of RR 18-2013, while the original provisions of RR-1299 did not recognize service by private courier as an accepted mode of service of BIR notices.

Hence, considering that Mr. Jamora does not appear to be a duly authorized representative of petitioners, and the service of the FDDA through private courier is not deemed a valid service thereof under the original provisions of RR 12-99, We find that the only valid service made to petitioners of the subject FDDA is when a copy thereof was given by the National Investigation Division of the BIR to their counsel, Atty. Jason L. Fernandez, on July 2, 2013.[182]

It appearing that the instant Petition for Review was filed on August 1, 2014 (or 30 days after service to petitioner's counsel), the same was timely filed, pursuant to Section 11 of RA 1125, as amended by RA 9282, as follows:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any part adversely affected by a decision**, ruling or inaction of the Commissioner of Internal Revenue xxx 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.

xxx xxx xxx." *(Emphases supplied)*

Such being the case, this Court has acquired and is vested with jurisdiction to entertain the instant case."

The foregoing ruling was reiterated in the Resolution[183] dated July 27, 2018 which denied respondent's *Motion for Reconsideration.*

Further, it is worth noting that the foregoing Resolutions were

[182] Exhibit "P-60", Docket, p. 76.
[183] Docket – Vol. VII, pp. 3403 to 3440.

challenged by respondent via a *Petition for Certiorari* before the Supreme Court in G.R. No. 242265, entitled *Commissioner of Internal Revenue vs The Court of Tax Appeals – First Division and Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao.* In the Resolution[184] dated January 21, 2019. In said case, the Supreme Court (First Division) dismissed respondent's *Petition for Certiorari* and held that respondent failed to sufficiently show that any grave abuse of discretion was committed by the CTA in rendering the said challenged Resolutions dated January 27, 2015 and July 27, 2018.

Accordingly, based on the evidence on record, the only valid service made to petitioners of the subject FDDA was when a copy thereof was given by the NID of the BIR to their counsel, Atty. Jason L. Fernandez, on July 2, 2013. Counting thirty (30) days therefrom, petitioners had until August 1, 2013 to appeal to the CTA. Hence, the filing of the instant *Petition for Review* on August 1, 2013 was on time, thereby giving the Court jurisdiction over the present case.

We shall now proceed with the issue on the validity of the subject tax assessment.

The assessment is void for violation of petitioners' rights to due process.

Central to the resolution of the present controversy is the question of whether or not petitioner was duly served with the Notice of Informal Conference (NIC).

Under RR No. 12-99, the then prevailing regulation, the NIC is part of the due process requirement in the issuance of a deficiency tax assessment, to wit:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> *3.1.1* ***Notice for informal conference.*** — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is

[184] Docket – Vol. X, p. 4910.

> liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.** If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted." (*Emphasis supplied.*)

Based on the foregoing provisions, part of the due process requirement in the issuance of a deficiency tax assessment is the issuance and service of the NIC. Under the rules, the taxpayer shall initially be informed in writing of the discrepancies in the payment of his internal revenue taxes for purposes of informal conference, in order to afford the taxpayer with an opportunity to present his side of the case. The use of the word "shall" describes the mandatory nature of the service of a NIC.

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[185] ("Fitness by Design case"), the Supreme Court reiterated the mandatory nature of the NIC, to wit:

> "The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.

[185] G.R. No. 215957, November 9, 2016.

> **Section 3 of Revenue Regulations No. 12-99, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice of informal conference**. The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes. If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing of the discrepancies in his or her payment of internal revenue taxes for 'Informal Conference.' The informal conference gives the taxpayer an opportunity to present his or her side of the case.
>
> xxx xxx xxx." (*Emphasis supplied.*)

In the instant case, however, an evaluation of the records of the case and evidence presented reveals that respondent failed to prove that a NIC was issued and served to petitioners.

To prove the issuance and service of the NIC, respondent offered the following documents as Exhibit "R-40" [186]:

> 1. NIC dated January 18, 2012[187], inviting petitioner for an informal conference on January 31, 2012;
>
> 2. *Initial Assessment Informal Conference* dated January 31, 2012, stating that after investigation, there has been found due from petitioners the amount of Php703,410,726.73 and Php1,446,245,864.33 as deficiency taxes for taxable years 2008 and 2009.[188]

However, in the *Commissioners Report on Exhibits Marked* dated July 25, 2017[189], only the *Initial Assessment Informal Conference* was marked as Exhibit "R-40", while the NIC dated January 18, 2012 was **not** marked as respondent's evidence.

Consequently, the admission of Exhibit "R-40" in the Resolution[190] dated June 8, 2021 only pertains to the *Initial*

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[186] *Respondent's Formal Offer of Evidence (Preliminary Hearing for Determination of Bond Incidental to Suspension of Collection of Taxes)*, Docket- Vol. VII, pp. 3151 to 3166.
[187] BIR Records, Folder 1, p. 31.
[188] BIR Records, Folder 1, pp. 76 to 84.
[189] Docket – Vol. VI, pp. 2835 to 2840.
[190] Docket – Vol. XII, pp. 5772 to 5773.

Assessment Informal Conference and not to the NIC. As such, the NIC should not even be considered as part of respondent's evidence.

Nonetheless, even if We consider the said document, records reveal that the said NIC was not served to petitioners. No proof of service was presented by respondent to show that it was actually received by petitioners.

It must be remembered that as with the other notices required under the regulation, the purpose of sending a NIC is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.[191]

Clearly, petitioners' rights to due process were violated in this case, not only because the subject NIC was not received by petitioners, but more importantly, because petitioners were not given opportunity to present their side of the case through an informal conference as required under the rules and to settle the alleged deficiency taxes at the earliest possible time without the need for the issuance of a formal assessment.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue,*[192] the Supreme Court elucidated on the importance of observing due process in issuing deficiency tax assessments and in the collection of taxes, viz.:

> "Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> xxx xxx xxx

[191] *Spouses Emmanuel Pacquiao and Jinkee J. Pacquiao vs the Court of Tax Appeals – First Division and the Commissioner of Internal Revenue,* G.R. No. 213394, April 6, 2016 citing *Commissioner of Internal Revenue v. Metro Superama, Inc.*, 652 Phil. 172, 186 (2010).
[192] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.
>
> xxx xxx xxx
>
> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that **the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference** and a Preliminary Assessment Notice as required by Revenue Regulations No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void." (*Emphasis supplied.*)

Clearly from the foregoing, tax assessments that fail to strictly comply with the due process requirements are null and void. Similarly in the instant case, the violation of petitioners' right to due process makes the subject assessment void.

While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

Petitioners were not duly informed of the basis of the assessment.

Section 228 of the NIRC of 1997, as amended, provides for the procedures in issuing assessment notices, to wit:

> "SEC. 228. ***Protesting of Assessment***. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx

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

Based on the foregoing, failure to state in writing the factual and legal basis of the assessment renders the said assessment void.

In this case, a careful examination of the FLD[193] shows that in assessing petitioners with deficiency taxes, respondent relied primarily on the alleged "best possible sources", without specifying the source documents used as basis in computing the assessed deficiency taxes. The FLD did not even indicate how respondent arrived at the amounts alleged to be petitioner EDP's gross income from his fights. Plainly, a reading of the FLD and the Details of Discrepancy would readily show that petitioners were not duly informed of the factual basis of the assessment.

Further, during the hearing of the case, respondent presented Exhibits "R-43-1"[194], "R-43-2"[195], "R-43-3"[196], "R-43-4"[197], "R-43-5"[198], and "R-43-6"[199], which were used as basis for the subject assessment. A perusal of the said exhibits shows that these pertain to news articles and clippings. Notably, the FLD made **no** reference to these articles. This was confirmed by respondent's witness, RO Leonesto Bernal in open court, as follows:[200]

"ATTY. FERNANDEZ

Q. Now, I refer you to Annex "A-1" of Exhibit "R-19"[201]. Now, you made a finding with respect to petitioners' income earned from the United States and from the Philippines for the years 2008 and 2009, am I correct?

MR. BERNAL

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[193] Exhibit "R-19", BIR Records – Folder 2, pp. 106 to 112.
[194] Docket – Vol. VII, pp. 3069 to 3070.
[195] Docket – Vol. VII, p. 3071.
[196] Docket – Vol. VII, pp. 3072 to 3073.
[197] BIR Records – Folder 1, p. 44.
[198] Docket – Vol. VII, pp. 3075 to 3076.
[199] Docket – Vol. VII, pp. 3077 to 3079.
[200] Transcript of Stenographic Notes (TSN) – Vol. 3, Hearing held on August 23, 2017, pp. 43 to 60.
[201] *Formal Letter of Demand* dated May 2, 2012, BIR Records - Folder 2, pp. 106 to 112.

A. Yes. Sir.

ATTY. FERNANDEZ

Q. And according to Exhibit "R-19," you found that there are three (3) types of US income of petitioner which consist of boxing, pay per view share and close[d] [circuit] sales, am I correct?

MR. BERNAL

A. Yes Sir.

ATTY. FERNANDEZ

Q. In the basis of this finding, you obtained Exhibits "R-43-1" to R-43-6"[202], am I correct?

MR. BERNAL

A. Included among the electronic documents I mentioned, yes.

ATTY. FERNANDEZ

Q. But you did not provide petitioners with copies of Exhibits ""R-43-1" to "R-43-6", during the administrative stage, am I correct?

MR. BERNAL

A. Are you pertaining the Annex "A" of the Formal Letter of Demand?

ATTY. FERNANDEZ

Q. Yes, in the Formal Letter of Demand, you did not provide copies of the newspaper clippings and materials to form the basis of your assessment, am I correct?

MR. BERNAL

A. Yes, it was not attached.

[202] Docket – Vol. VII, pp. 3069 to 3079; BIR Records, - Folder 1, p.44.

ATTY. FERNANDEZ

Q. **And these sources particularly Exhibits "R-43-1" to "R-43-6", were not even mentioned or described in the FLD, [as] well [as in] the FAN, the FLD and the FDDA, am I correct?**

MR. BERNAL

A. **The clippings was not mentioned** but it was part of the type of income it was assessed.

xxx xxx xxx

JUSTICE DEL ROSARIO

I see. Now, you were saying earlier that third party sources consists of certain newspaper reports, is that correct?

MR. BERNAL

The newspaper and magazine clippings became a third party, your Honors, since we do not have any documents available on hand, your Honors." (*Emphasis and underscoring supplied.*)

It is evident from the foregoing testimony of RO Bernal that the newspaper articles and clippings which form the basis for the subject assessment were **not** mentioned in the FLD and that petitioners were **not** even furnished with copies of the said documents.

In *Fitness By Design case*, the Supreme Court highlighted the importance of reflecting the basis of the assessment in the FLD and assessment notices, to wit.:

> "The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means **the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory**. **The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed.** Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The

requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process." (*Emphasis supplied.*)

Further, in the case of *Commissioner of Internal Revenue vs Spouses Remigio P. Magaan and Leticia L. Magaan*[203], the Supreme Court declared the assessment void for failure to provide the taxpayer with the factual basis of the assessment, *to wit*:

"**The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed**. As a requirement of due process, this rule allows the taxpayer to make an effective protest:

xxx xxx xxx

The Formal Letter of Demand with Audit Result/Assessment Notices states that the complete details of the deficiency assessments can be found in Schedules 1 and 2 of the letter. **However, an examination of the records reveals that these schedules do not show the factual basis of the assessments.** These schedules merely contain tabular summaries of the allegedly undeclared taxable income and deficiency taxation of respondents. They only mentioned "payments received per information" but have no other details stating the information received, or any other explanation that would enable the taxpayer to make an effective protest.

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In failing to provide respondents with material information, petitioner denied them the opportunity to effectively protest. This renders the assessments

[203] G.R. No. 232663, May 3, 2021.

void, for which respondents cannot be held liable." (Emphasis supplied.)

Clearly, it is mandatory that the factual and legal basis of the assessment be reflected in the FLD; and that the same cannot be presumed. This mandatory requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

Applying the foregoing judicial pronouncements in this case, considering that the FLD failed to indicate the factual basis of the assessment and that petitioners were not duly informed of the source documents used as basis in computing the assessed deficiency taxes, the subject assessment should be declared invalid for violation of petitioners' due process rights.

Even assuming *arguendo* that petitioners were informed of the basis of the assessment, the Court finds that the assessment lacks sufficient basis and foundation, and must therefore be canceled

The subject assessment lacks sufficient basis.

In this case, respondent assessed petitioners for deficiency taxes based on the "best evidence obtainable" pursuant to Section 6 (B) of the NIRC of 1997, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> xxx xxx xxx
>
> *(B) Failure to Submit Required Returns, Statements, Reports and other Documents.* — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, **the Commissioner shall assess the proper tax on the best evidence obtainable**." (*Emphasis supplied.*)

In *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*,[204] the Supreme Court elaborated on the power of the BIR Commissioner to assess a taxpayer based on the best evidence obtainable, *to wit*:

> "The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, **the rule does not apply where the estimation is arrived at arbitrarily and capriciously.**
>
> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> **However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment', i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice**

[204] GR. No. 136975, March 31, 2005.

> **disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence**.
>
> XXX XXX XXX
>
> **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption**." (*Emphasis supplied.*)

Based on the foregoing, while the CIR, in the absence of accounting records or other documents necessary for the proper determination of the taxpayer's internal revenue tax liability, has the power to assess taxpayer based on the best evidence obtainable and may resort to approximation in the calculation of the taxes due, the same should not be arrived at arbitrarily and capriciously. Further, it should be noted that although a tax assessment has the presumption of correctness and regularity in its favor, it should be considered void if not supported by sufficient evidence or is based on mere presumptions.

Otherwise stated, an assessment should always be based on facts and cannot be based on mere presumptions. In order to stand judicial scrutiny, it must be shown that it has sufficient basis and foundation, and is not arbitrary or capricious.

In this case, records show that the subject assessment was principally based on news articles. This was confirmed by RO Bernal in his direct testimony as follows:[205]

> "69. Q: What Third Party Information did you use?
>
> A: The following were some of the documents used to assess petitioner's actual Income Tax liability and Value-Added Tax liability:

[205] Exhibit "R-31", Docket – Vol. VII, pp. 2611 to 2612.

1. Inquirer Website article dated 17 November 2010, Pay-Per-View Hits on Pacquiao-Margarito.

   In this article, it was reported that the pay-per-view hits of the fight between Hatton and Pacquiao garnered 900,000 hits in year 2009.

2. Youtube Boxing Videos Website article dated December 2011, Manny Pacquiao PPV Champion.

   In this article, it was reported that the pay-per-view hits of the fight between Dela Hoya and Pacquiao garnered 1,250,000 hits in year 2008.

3. Philstar Website Article dated 19 November 2009.

   In this article, it was reported that the boxing purse of Emmanuel Pacquiao in his fight with Cotto is $13,000,000.00 with 2,000,000.00 pay-per-view hits.

4. Manila Standard Today Newspaper Article dated 20 December 2010.

   In this article, it was reported that Emmanuel Pacquiao was the highest individual taxpayer for 2008. However, in 2009, it was reported that he ranked as 113th as an individual taxpayer.

5. Philippine Headline News Online Website article 8 December 2010.

   In this article, it was reported that the pay-per-view hits of the fight between Dela Hoya and Pacquiao garnered 1,250,000 hits in year 2008.

6. ESPN Website article 23 January 2009.

   In this article, it was reported that Emmanuel Pacquiao's boxing purse were

> $11,000,000.00 and $12,000,000.00 for 2008 and 2009, respectively."

The Court finds that the foregoing news articles are not sufficient basis for an assessment. In *Representatives Edcel C. Lagman, et al. vs. Hon. Salvador C. Medialdea, et al.,*[206] the Supreme Court held that news articles amount to "hearsay evidence, twice removed, and are thus without any probative value". The Supreme Court discussed as follows:

> "However, the so-called counter-evidence were **derived solely from unverified news articles on the internet, with neither the authors nor the sources shown to have affirmed the contents thereof.** It was not even shown that efforts were made to secure such affirmation albeit the circumstances proved futile. **As the Court has consistently ruled, news articles are hearsay evidence, twice removed, and are thus without any probative value, unless offered for a purpose other than proving the truth of the matter asserted.** This pronouncement applies with equal force to the Cullamat Petition which likewise submitted online news articles as basis for their claim of insufficiency of factual basis." (Emphasis supplied)

Applying the foregoing, considering that the documents presented by respondent as basis for the assessment of petitioners' deficiency taxes consists of unverified news articles and that the authors have no personal knowledge on the transactions involved, the same cannot be given any probative value. Further, a perusal of the records shows that there is no indication that the news articles were corroborated. Likewise, there is no showing that the revenue officers performed due diligence to confirm the veracity of the information contained in the said articles before issuing the subject assessment.

Clearly, the unverified news articles cannot be considered as proper and sufficient factual basis for the assessment. Thus, finding the subject assessment without sufficient basis, the same should be cancelled and withdrawn.

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[206] G.R. Nos. 216658, 231771, and 231774, July 4, 2017, citing *Feria v. Court of Appeals,* 382 Phil. 412, 423 (2000).

In sum, the Court finds that the subject assessment for deficiency income tax is void for violation of petitioners' right to due process and for lack of sufficient factual basis. Needless to state, a void assessment bears no fruit.[207] Consequently, the issuance of the PCL, FNBS, and the *Warrants of Distraint and/or Levy and Garnishment* are likewise void and ineffectual.

With the foregoing, it becomes unnecessary to address the remaining arguments raised by the parties in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the subject deficiency income tax assessment in the aggregate amount of ₱2,229,020,905.50, inclusive of interests and surcharges, for taxable years 2008 and 2009, the *Preliminary Collection Letter* dated July 19, 2013, the *Warrants of Distraint and/or Levy and Garnishment* dated July 1, 2013, and the *Final Notice Before Seizure* dated August 7, 2013, all issued against petitioners are **CANCELLED** and **SET ASIDE**.

Respondent is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioners during the pendency of the instant case.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[207] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson, Special 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice