REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LORETO CABALQUINTO, JR., Petitioner,	**CTA CASE NO. 10910**
- versus -	Members: **DEL ROSARIO**, *P.J.*, *Chairperson*, **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
BUREAU OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 18 2023; 10:30 AM

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RESOLUTION

This resolves respondent's **Motion to Dismiss**, incorporated in its Answer, filed on November 28, 2022, *sans* petitioner's comment.[1]

In its Motion, respondent seeks the dismissal of this case based on the following grounds:

1. The filing of the Petition for Review is premature for failure of petitioner to exhaust administrative remedies;

2. This Court has no jurisdiction over the special civil action of *mandamus* in directing the Commissioner of Internal Revenue (CIR) to issue a **Certificate of Tax Delinquency (CTD)** and **Acceptance Payment Form (APF)** for approval for the application of Tax Amnesty on Delinquencies; and,

3. The Petition for Review should be dismissed for failure to state a cause of action and for being moot and academic.[2]

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[1] In the Resolution dated January 25, 2023, the Court expunged petitioner's *Motion for Extension of Time to File Compliance*, which sought for additional time to file comment on respondent's *Motion to Dismiss*, for being a prohibited motion. Docket, p. 337.
[2] Docket, pp. 235-248.

THE COURT'S RULING

After a thorough review of the facts and applying the governing laws on the matter, the Court finds respondent's **Motion to Dismiss** meritorious.

Under Section 12, Rule 15 of the Rules of Court, as amended, which apply suppletorily to proceedings of this Court,[3] a motion to dismiss is a prohibited motion except when it raises any or all of the following grounds, to wit:

> "Section 12. *Prohibited motions.* — The following motions shall not be allowed:
>
> (a) Motion to dismiss except on the following grounds:
>
> 1) That the court has no jurisdiction over the subject matter of the claim;
>
> 2) That there is another action pending between the same parties for the same cause; and
>
> 3) That the cause of action is barred by a prior judgment or by the statute of limitations; x x x"

Failure to exhaust administrative remedies and to state a cause of action are not valid grounds for a motion to dismiss.

With respect to the ground that this Court has no jurisdiction over special civil actions for *mandamus*, the same deserves scant consideration.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended, provides:

> "Sec. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under** the National Internal Revenue or **other laws administered by the Bureau of Internal Revenue**;

[3] Sec. 3, Rule 1, Revised Rules of the Court of Tax Appeals, as amended.

2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or **other matters arising under** the National Internal Revenue Code or **other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x"

Verily, the Court has jurisdiction over "other matters" arising out of tax laws other than the National Internal Revenue Code (NIRC) of 1997, as amended, which are being enforced by the Bureau of Internal Revenue (BIR). One of these laws is RA No. 11213 or the Tax Amnesty Act -- the statute petitioner invokes for his availment of the Tax Amnesty on Delinquencies.

Moreover, the Supreme Court has ruled, in *Bureau of Customs vs. The Honorable Agnes VST Devanadera, et al.*,[4] that this Court has jurisdiction over special civil actions for *certiorari*, to wit:

"x x x Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of *certiorari*, prohibition and *mandamus*. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of *certiorari*, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of certiorari, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.

The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that **the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.**

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[4] G.R. No. 193253, September 8, 2015.

> **Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*.** In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total." (*Boldfacing supplied*)

Moreover, in *Banco de Oro, et al. vs. Republic of the Philippines, et al.*,[5] the Supreme Court elucidated that within the judicial system, it is this Court which has jurisdiction over **all tax matters**, *viz.*:

> "The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all maters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.
>
> This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).
>
> **Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.**
>
> **In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals." (*Boldfacing supplied*)

Similar to *certiorari*, the writ of *mandamus* is also a special civil action. It seeks to "compel the performance of a ministerial act, or one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done."[6]

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[5] G.R. No. 198756, August 16, 2016.
[6] *Marey Beth D. Marzan vs. City Government of Olongapo, et al.*, G.R. No. 232769, November 3, 2020.

By virtue of the foregoing pronouncements of the Supreme Court, the Court finds that it has jurisdiction over petitions for *mandamus* that seek to compel the performance of ministerial acts in relation to laws being administered by the BIR, which includes RA No. 11213. Thus, the Court has jurisdiction over the present Petition.

Notwithstanding the foregoing disquisition, the Court finds it proper to dismiss the case on the ground of mootness.

To recall, the Petition seeks to compel respondent to issue the **CTD** and **APF**, which are only preparatory documents necessary for availment of the Tax Amnesty on Delinquencies.

Section 19 of RA No. 11213 provides for the manner and period of availment of the Tax Amnesty on Delinquencies, *viz.*:

> "Section 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* - Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, **within <u>one (1) year</u> from the effectivity of the Implementing Rules and Regulations of this Act**, file with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return **accompanied by a <u>Certification of Delinquency</u>**. The payment of the amnesty tax shall be made at the time the Return is filed:
>
> *Provided*, **That the Revenue District Officer shall issue and endorse an <u>Acceptance Payment Form</u>, in such form as may be prescribed in the Implementing Rules and Regulations of this Act** authorizing the authorized agent bank, or in the absence thereof, the revenue collection agent or municipal treasurer concerned, to accept the amnesty tax payment:
>
> *Provided, further*, That the availment of the Tax Amnesty on Delinquencies and the issuance of the corresponding Acceptance Payment Form do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer." (*Boldfacing and underscoring supplied*)

Relatedly, Section 5 of Revenue Regulations (RR) No. 4-2019 lists the CTD and APF as among the documents required to be submitted by the taxpayer prior to availment of the Tax Amnesty on Delinquencies.

Several revenue issuances thereafter extended the period of availment of the Tax Amnesty on Delinquencies, *viz.*:

(1) Until April 23, 2020 per RR No. 5-2020;
(2) Until May 23, 2020 per Revenue Memorandum Circular (RMC) No. 33-2020;
(3) Until June 8, 2020 per RMC No. 38-2020;
(4) Until June 22, 2020 per RR No. 11-2020, which implemented Section 4(z) of RA No. 11469 or the Bayanihan to Heal as One Act;
(5) Until December 31, 2020 per RR No. 15-2020 and RMC No. 61-2020; and,
(6) Until June 30, 2021 per RR No. 32-2020.

No further extension of the deadline was thereafter issued.

In *Express Telecommunications Co., Inc. (EXTELCOM) vs. AZ Communications, Inc.*,[7] the Supreme Court ruled that courts can **decline jurisdiction** over a case on the ground of mootness, thus:

> "A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value. In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*:
>
>> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. **Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.**" (*Boldfacing supplied*)

Petitioner's prayer for the issuance of the CTD and APF, long after the lapse of the deadline for availment of the Tax Amnesty on Delinquencies on **June 30, 2021**, will serve no practical purpose. Plainly, the case is now moot and academic.

Anent petitioner's other prayer for the invalidation of the assessment and the resulting Warrant of Distraint and/or Levy (WDL) issued against him, the Court cannot assume jurisdiction thereon.

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[7] G.R. No. 196902, July 13, 2020.

The present Petition, although denominated as "Petition for Review", essentially discusses petitioner's efforts to avail the benefits of the Tax Amnesty on Delinquencies as provided for under RA No. 11213. It is fundamentally a **petition for *mandamus*** which seeks to compel respondent to issue the CTD and APF necessary for petitioner's availment of the Tax Amnesty on Delinquencies. This is highlighted by petitioner in Paragraph 4 of the Petition, *viz.*:

> "4. This **Petition for Review is filed by way of Mandamus under Rule 65 of the Rules of Court** seeking to command [r]espondent to issue a Certificate of Tax Delinquency/Tax Liabilities (CTD) and Acceptance Payment Form (APF) [to] protect the rights of [p]etitioner, pursuant to Republic Act No. 11213 or the Tax Amnesty Act, Section 17(d)."[8] (*Boldfacing supplied*)

Under Section 3, Rule 65 of the Rules of Court, as amended, *mandamus* is the remedy available when "a tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, [and], **there is no other plain, speedy, and adequate remedy in the ordinary course of law**."[9] It is an **extraordinary remedy** issued only in cases of **extreme necessity** where the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled.[10]

Petitioner's prayer for the invalidation of the assessment and WDL is inconsistent or incompatible with a petition for *mandamus*. **The invalidation of a tax assessment and its resulting collection is not a relief which may appropriately be incorporated in a petition for *mandamus***. The imposition (or invalidation) of a tax assessment is not a ministerial function for which the writ of *mandamus* may lie.[11] The plain, speedy and adequate remedy to assail a disputed assessment is by filing an appeal via a petition for review in accordance with Section 228 of the National Internal Revenue Code of 1997, as amended, in relation to Sections 3(a) and 4(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

WHEREFORE, premises considered, respondent's **Motion to Dismiss** is **GRANTED**. The Petition for Review is **DISMISSED** on the ground of mootness.

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[8] Docket, p. 7.
[9] Section 3, Rule 1, Revised Rules of the Court of Tax Appeals, as amended.
[10] *Special People, Inc. Foundation, represented by its Chairman, Roberto P. Cericos vs. Nestor M. Canda, et al.*, G.R. No. 160932, January 14, 2013.
[11] *Meralco Securities Corporation (now First Philippines Holdings Corporation) vs. Hon. Victorino Savellano, et al.*, G.R. Nos. L-36181 & 36748, October 23, 1982.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
With all due respect, please see my dissenting opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 1 8 2023 ; 10:30 AM

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DISSENTING OPINION

REYES-FAJARDO, *J*.:

With due respect, I dissent on the dismissal of the Petition for Review.

In its Petition for Review, petitioner seeks to: (1) mandate respondent to issue the Certificate of Tax Delinquency ("CTD") and Acceptance Payment Form ("AFP") in favor of petitioner in order that it may be deemed to have fully complied with all the conditions set forth in Republic Act (R.A.) No. 11213, otherwise known as "The Tax Amnesty Act"; and (2) declare null and void the final assessment and warrant of distraint and/or levy ("WDL").

Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[1] as amended by RA No. 9282 provides among others, that

1 An Act Creating the Court of Tax Appeals.

respondent's action over other matters arising from the NIRC, as amended, are appealable to the Court.[2] In addition, an aggrieved party by such action must appeal the same to the Court, within thirty (30) days from receipt thereof. These provisions read:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue** or other laws administered by the Bureau of Internal Revenue;
>
> ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....
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> ...[3]

Among the matters detailed in Section 2 of the NIRC, as amended, is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[4] Specifically, Section 205(a)[5] thereof

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2 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

3 Boldfacing supplied.

4 **SEC. 2.** ***Powers and Duties of the Bureau of Internal Revenue.*** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... See *Commissioner of Internal Revenue v. Bank of the Philippines Islands*, G.R. No. 227049, September 16, 2020. (Boldfacing supplied)

permits the BIR to collect these taxes, fees, and charges through administrative remedy of distraint and/or levy, *inter alia.*

Relevantly, to determine the jurisdiction over the subject matter, *Malabanan v. Republic of the Philippines* [6] ordained that:

> ... the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.

True, petitioner prays that the Court command respondent to issue the CTD and APF in order that it may be deemed to have fully complied with all the conditions set forth in RA No. 11213. Yet, the circumstance which prompted petitioner to file an appeal before the Court is his receipt of the Bureau of Internal Revenue's WDL. Specifically, as alleged in his Petition, said WDL was left in the gate of petitioner's residence, and his wife saw such document on June 7, 2022,[7] whereas the filing of said Petition was on July 6, 2022.[8] In other words, petitioner primarily seeks to challenge the BIR's WDL, with the ancillary prayer to command respondent issue the CTD and APF as proof of compliance with RA No. 11213.

Thus, counting thirty (30) days from petitioner's receipt of the WDL on June 7, 2022, he had until July 7, 2022 to seek judicial recourse. Precisely, petitioner's timely filing of his Petition for Review on July 6, 2022, vested the Court with jurisdiction over CTA Case No. 10910.

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5 SEC. 205. *Remedies for the Collection of Delinquent Taxes.* - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) **By distraint of** goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, **bank accounts** and interest in and rights to personal property ... (Boldfacing supplied)

6 G.R. No. 201821, September 19, 2018.

7 Par. 42, Petition for Review. Docket, p. 14.

8 Petition for Review. Docket, p. 6.

Considering the foregoing, I vote to deny respondent's Motion to Dismiss, embodied in its Answer, filed on November 28, 2022.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice