REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

JULIO R. DE QUINTO,
Petitioner,

-*versus*-

BUREAU OF INTERNAL REVENUE (BIR), THRU REVENUE DISTRICT OFFICES NO. 04 MANDALUYONG CITY AND 07, QUEZON CITY,
Respondent.

CTA Case No. 9623

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUL 04 2023 2:55PM

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DECISION

MANAHAN, *J.:*

This is a *Verified Petition*[1] filed by petitioner Julio R. De Quinto (De Quinto) against respondent Bureau of Internal Revenue (BIR), Revenue District Office (RDO) Nos. 04, Mandaluyong City and 07, Quezon City on June 27, 2017, praying for the issuance of a Temporary Restraining Order (TRO) and/or preliminary injunction to enjoin respondent from implementing the assailed Warrant of Distraint and/or Levy (WDL) and to nullify the deficiency tax liabilities in the amount of Php6,082,073.90.[2]

THE PARTIES

Petitioner is a taxpayer with Tax Identification No. (TIN) 100-053-269-00[3] and registered under the business name of "JRDQ Aircon Services Center".[4] Petitioner is residing at 315 Maysilo Street, Plainview, Mandaluyong City.[5]

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[1] Docket, CTA Case No. 9623, pp. 12-18.
[2] *Id.*, Prayer, Verified Petition, p. 16.
[3] *Id.*, Stipulated Facts, Joint Stipulation of Facts and Issues, p. 132.
[4] Exhibit "R-1", Certificate of Registration, BIR Records, p. 6.
[5] *Id.*, Parties, Verified Petition, p. 13.

Respondent is the government agency vested with the power to decide tax cases, including disputed assessment pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended, with principal address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

THE FACTS

On October 29, 2012, respondent issued Letter Notice (LN)[7] No. 041-RLF-11-00-00106 informing petitioner De Quinto of his alleged underdeclared sales amounting to Php9,946,079.80 as a result of the computerized matching conducted by the BIR from the information/data provided by third party sources.

On January 14, 2013, petitioner wrote Ms. Isabel A. Paulino, Revenue District Officer of RDO No. 41, Mandaluyong City to inform the latter that his business as dealer of Petron Corporation located at 198 Boni Avenue, Plainview, Mandaluyong City was already turned-over to Maximus Trading Inc. and has no business dealings with them anymore since late of year 2006.[8]

On April 2, 2013, respondent issued Letter of Authority (LOA) No. SN: eLA201100026965/LOA-041-2013-00000128 authorizing Revenue Officer (RO) Virginia Rafols and Group Supervisor (GS) Evelyn Ang of RDO No. 41, Mandaluyong City to examine the books of accounts and other accounting records of petitioner for income tax (IT) and value added-tax (VAT) covering the period from January 1, 2011 to December 31, 2011.[9]

On November 20, 2013, the RDO No. 41, Mandaluyong City issued the Notice for Informal Conference[10] together with the Computation Sheet[11] directing petitioner to submit contrary evidence on its findings.

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[6] Docket, Stipulated Facts, Joint Stipulation of Facts and Issues, p.132.
[7] Exhibit "R-1", BIR Records, p. 9.
[8] Docket, Exhibit "P-3", Letter dated January 14, 2013, p. 110.; Exhibit "R-1", BIR Records, p. 29.
[9] BIR Records, Exhibit "R-4", p. 1.
[10] BIR Records, Exhibit "R-5", p. 43.
[11] BIR Records, Exhibit "R-5-A", p. 42.

However, per undated Memorandum[12] issued by RO Rafols to the Regional Director, petitioner failed to provide the requested documents. Hence, on December 3, 2014, respondent issued the Preliminary Assessment Notice (PAN)[13] with Details of Discrepancies[14] for the alleged petitioner's deficiency IT and VAT.

On December 19, 2014, respondent issued the Formal Letter of Demand (FLD)[15] with Details of Discrepancies[16] together with the Assessment Notices for deficiency IT[17] and VAT[18].

On March 13, 2017, a letter from the Regional Director informed petitioner that for his failure to file a protest within the prescribed period, the assessment became final, executory and demandable.[19]

An undated WDL[20] was constructively served to petitioner on May 30, 2017.[21] Hence, petitioner filed the instant petition on June 27, 2017.

On July 21, 2017, this Court directed[22] respondent to file his *Answer*[23] which he filed on August 7, 2017. Respondent raised the following Affirmative and Special Defenses, to wit:

1. The failure of the petitioner to file an appeal before this Court within thirty (30) days from receipt of FLD renders the assessment final, executory and demandable, hence, the Court has no jurisdiction on the instant petition; and

2. The Verification and Certification against Forum Shopping failed to comply with Section 4, Rule 7 of the Rules of Court, as amended.

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[12] BIR Records, Exhibit "R-6", p. 47.
[13] BIR Records, Exhibit "R-9", pp. 63-64.
[14] BIR Records, Exhibit "R-9-A", p. 62.
[15] BIR Records, Exhibit "R-12", pp. 79-80.
[16] BIR Records, Exhibit "R-12-A", p. 78.
[17] BIR Records, Exhibit "R-10", p. 82.
[18] BIR Records, Exhibit "R-11", p. 81.
[19] BIR Records, Exhibit "R-13", p. 140.
[20] Docket, p. 115; BIR Records, p. 155.
[21] BIR Records, Memorandum dated May 31, 2017, p. 156.
[22] Docket, *Summons* dated July 21, 2017, p. 37
[23] *Id.*, pp. 38-46. *am*

On August 10, 2017, the parties were directed to submit their respective pre-trial briefs for the scheduled pre-trial conference.[24] Respondent filed his Pre-Trial Brief[25] on September 29, 2017, while petitioner filed his Pre-Trial Brief[26] on October 20, 2017.

The parties submitted their Joint Stipulation of Facts and Issues[27] on April 18, 2018, hence, the Court issued the Pre-Trial Order[28] on May 17, 2018.

Petitioner first presented his witness and documentary evidence. After such presentation, petitioner filed his *Formal Offer of Documentary Exhibits*[29] on September 14, 2020 consisting of the following:

Exhibit	**Particulars**
"P-1"[30]	Retirement Letter to the Office of the Treasurer of Mandaluyong City
"P-2"[31]	Certification dated October 20, 2008 issued by the Office of the Barangay Chairman of Plainview, Mandaluyong City
"P-3"[32]	Letter dated January 14, 2013 addressed to Isabel A. Aquino, RDO 41, District Office
"P-4"[33]	Letter dated August 18, 2015 addressed to Alice S.A. Gonzales, BIR Arrears Management Team-Collection Division, Region 7 (Photocopy)
"P-5"[34]	Certification dated September 4, 2015 issued by Petron Corporation
"P-5-A"[35]	Certification dated September 4, 2015 issued by Adrian P. Mercado, Manager of Credit Department of Petron Corporation (Faithful Reproduction of Original)

[24] *Id., Notice of Pre-Trial Conference*, pp. 48-49.
[25] *Id.* at pp. 57-62.
[26] Docket, pp. 95-100.
[27] *Id.* at pp. 132-135.
[28] *Id.* at pp. 137-142.
[29] *Id.* at pp. 265-268.
[30] *Id.* at p. 107.
[31] *Id.* at p. 109.
[32] *Supra*, Note 8.
[33] BIR Records, pp. 115-116.
[34] Docket, p. 113.
[35] *Id.* at p. 269.

"P-6"[36]	Letter dated March 13, 2017 from BIR Region 7
"P-7"[37]	WDL
"P-8"[38]	Judicial Affidavit of Mr. Julio R. De Quinto

Except for Exhibits "P-1", "P-2", and "P-5" which were not admitted for failure of the petitioner to submit the originals for comparison, all other exhibits were admitted.[39]

Hence, petitioner moved[40] for the tender of such excluded evidence pertaining to Exhibits "P-1" and "P-2", which the Court granted under the Court's Resolution dated November 20, 2020.[41]

Respondent then presented his witnesses and documentary evidence. After such presentation, *Respondent's Formal Offer of Evidence*[42] was filed on April 4, 2022, consisting of the following:

Exhibit	Particular
"R-1"	Whole Tax Docket of Mr. Julio Rawueno De Quinto for Taxable Year 2011
"R-2"[43]	Letter Notice No. 041-RLF-11-00-00106 dated October 29, 2012
"R-3"[44]	Memorandum of Assignment dated October 29, 2012
"R-4"[45]	Letter of Authority No. LOA-041-2013-00000128 dated April 2, 2013
"R-5"[46]	Notice for Informal Conference
"R-5-A"[47]	Computation Sheet
"R-6"[48]	Memorandum
"R-7"[49]	Revenue Officer's Audit Report on

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36 Supra, Note 19.
37 *Supra*, Note 19.
38 Docket, pp. 101-105.
39 *Id.*, Resolution dated October 6, 2020, pp. 275-276.
40 *Id.*, *Motion to Tender Excluded Evidence* filed on November 11, 2020, pp. 277-280.
41 *Id.* at p. 283.
42 *Id.* at pp. 317-321.
43 *Supra*, Note 7.
44 BIR Records, p. 10.
45 Supra, Note 9.
46 *Supra*, Note 10.
47 BIR Records, p. 42.
48 BIR Records, p. 47.
49 BIR Records, p. 46.

	Income Tax
"R-8"[50]	Revenue Officer's Audit Report on Value Added Tax
"R-9"[51]	Preliminary Notice dated December 3, 2014
"R-9-A"[52]	Details of Discrepancies
"R-10"[53]	Assessment Notice on Income Tax
"R-11"[54]	Assessment Notice on Value Added Tax
"R-12"[55]	Formal Letter of Demand on Income Tax and Value Added Tax
"R-12-A"[56]	Details of Discrepancies
"R-13"[57]	Judicial Affidavit of RO Virginia B. Rafols
"R-13-1"[58]	Signature of RO Virginia B. Rafols
"R-14"[59]	Judicial Affidavit of RO Paula Marie Bea-Lasam
"R-14-1"[60]	Signature of RO Paula Marie Bea-Lasam

On the other hand, petitioner filed his *Opposition Formal Offer of Evidence (Respondent Bureau of Internal Revenue)*[61] on April 12, 2022. However, the Court admitted all of respondent's evidence under the Resolution dated May 12, 2022[62] and directed the parties to submit their respective memoranda.

Petitioner submitted his Memorandum[63] on June 27, 2022. Thus, the case was submitted for decision on July 18, 2022 *sans* respondent's memorandum despite due notice.[64]

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[50] BIR Records, p. 45.
[51] *Supra*, Note 13.
[52] *Supra*, Note 14.
[53] *Supra*, Note 17.
[54] *Supra*, Note 18.
[55] *Supra*, Note 15.
[56] *Supra*, Note 16.
[57] Docket, Actual Marking is Exhibit "R-14", pp. 66-70.
[58] *Id.*, Actual Marking is Exhibit "R-14-a", p. 69.
[59] *Id.*, Actual Marking is Exhibit "R-15", pp. 82-86.
[60] *Id.*, Actual Marking is Exhibit "R-15-a", p. 85
[61] Docket, pp. 324-328.
[62] *Id.* at pp. 331-332.
[63] *Id.* at pp. 348-359.
[64] *Id.*, Resolution dated July 18, 2022, p. 363. am

ISSUES

The parties agreed that the issues to be tried and resolved in this case are as follows:[65]

1. Whether the petitioner is entitled to the issuance of a Writ of Injunction;

2. Whether the Tax Assessments of Php6,082,073.90 and the subsequent WDL are null and void;

3. Whether petitioner is liable for deficiency IT in the amount of Php3,407,260.18 and deficiency VAT in the amount of Php2,674,813.72 for taxable year 2011 inclusive of interest; and

4. Whether Assessment on IT and VAT have already become final, executory and demandable.

Petitioner's Arguments[66]

Petitioner argues that the assessment has no basis at all, thus, it should be declared null and void.

Petitioner also argues that he is not liable for deficiency IT and VAT because the assessment is considered void *ab initio*, hence, it will not attain finality. Thus, the instant petition should be granted and the writ of injunction should be issued.

Respondent's Arguments[67]

Respondent argues that the failure of the petitioner to file an appeal before this Court within thirty (30) days from receipt of the FLD renders the assessment final, executory and demandable, hence, the Court has no jurisdiction on the instant petition.

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[65] *Id.*, Pre-Trial Order, p. 138.
[66] *Supra*, Note 62.
[67] *Supra*, Note 22.

Respondent also avers that the instant petition's Verification and Certification against Forum Shopping failed to comply with Section 4, Rule 7 of the Rules of Court, as amended.

RULING OF THE COURT

The Court has jurisdiction over the case and the petition was timely filed.

Sections 7(a)(1) and 11 of RA No. 1125,[68] as amended by RA No. 9282,[69] provide as follows, to wit:

> "SECTION 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 <u>**other matters**</u> **arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring ours)*
>
> xxx xxx xxx
>
> "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.
>
> xxx xxx xxx."
>
> *(Emphases and underscoring ours)*

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[70] the Supreme Court held:

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

[69] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[70] G.R. No. 162852, December 16, 2004.

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue**...." (*Emphasis ours*)

Such rationale was reiterated in the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*[71], where the Supreme Court ruled that the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent on matters relating to assessments or refunds because the second part of Section 7(a)(1) of RA No. 1125, as amended, covers other cases that arise out of the NIRC or related laws administered by the BIR, to wit:

> "We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
>
> > Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, **or other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws**

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[71] G.R. No. 169225, November 17, 2010.

administered by the Bureau of Internal Revenue (BIR)." (*Additional emphasis ours*)

The issuance of WDL is covered under Section 207(B) of the 1997 NIRC, as amended[72], which certainly falls under "other matters arising under the National Internal Revenue Code", over which this Court has exclusive appellate jurisdiction.

The factual antecedents of the case reveal that the undated WDL was served and received by petitioner on May 30, 2017. Petitioner then had thirty (30) days from May 30, 2017 or until June 29, 2017 to file a petition before this Court. Thus, the filing of the instant petition on June 27, 2017 was on time.

Petitioner failed to prove the necessity of the issuance of writ of injunction.

Section 218 of the 1997 NIRC, as amended, provides:

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[72] Section 207. *Summary Remedies.* –
xxx xxx xxx

(B) *Levy on Real Property.* - After the expiration of the time required to pay the delinquent tax or delinquent revenue as prescribed in this Section, real property may be levied upon, before simultaneously or after the distraint of personal property belonging to the delinquent. To this end, any internal revenue officer designated by the Commissioner or his duly authorized representative shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of the tax and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines.

Levy shall be affected by writing upon said certificate a description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the Register of Deeds for the province or city where the property is located and upon the delinquent taxpayer, or if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.

In case the warrant of levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his tax delinquency, the Commissioner or his duly authorized representative shall, within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

Within ten (10) days after receipt of the warrant, a report on any levy shall be submitted by the levying officer to the Commissioner or his duly authorized representative: Provided, however, That a consolidated report by the Revenue Regional Director may be required by the Commissioner as often as necessary: Provided, further, That the Commissioner or his duly authorized representative, subject to rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, shall have the authority to lift warrants of levy issued in accordance with the provisions hereof.

> "SEC. 218. *Injunction not Available to Restrain Collection of Tax.* - No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

Relative thereto, the 4th paragraph of Section 11 or RA No. 1125, as amended, provides:

> "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, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts 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
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: ***Provided, however,*** **That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.**" (*Emphasis supplied*)

The abovementioned NIRC provision clearly states that an injunction cannot be issued by any courts to restrain the collection of national taxes. However, this Court pursuant to its Charter can suspend the collection of said national taxes when, in its opinion, such collection may jeopardize the interest of the Government and/or the taxpayer.

Thus, the applicant/petitioner must prove before this Court the urgent necessity of the writ to prevent serious damage or prejudice to its interests, as held in *Evy* an

Construction and Development Construction v. Valiant Roll Forming Sales Corporation,[73] to wit:

> "An injunctive writ is granted only to applicants with 'actual and existing substantial rights' or rights *in esse*. Further, **the applicant must show 'that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent serious damage.'** Thus, the writ will not issue to applicants whose rights are merely contingent or to compel or restrain acts that do not give rise to a cause of action." (*Emphasis supplied*)

Petitioner, in the course of proving his case, presented and offered evidence which were partially admitted and which proved that petitioner had ceased the operation of his gasoline station since the year 2006, hence, he derived no income anymore from such business.

From the list of evidence, petitioner failed to show the deleterious effect nor any resulting damage to him if said WDL will be implemented in order to justify the issuance of the requested writ.

Petitioner's failure to prove the damage and prejudice to his business of the supposed implementation of the subject WDL justifies the non-issuance of an injunction order.

The assessment is null and void as it is based on presumption.

In the instant case, the subject assessment was allegedly the result of a computerized matching conducted by the BIR from the information/data provided by third party sources under LN No. 041-RLF-11-00-00106 showing that petitioner had income from the operation of his alleged gasoline station in the year 2006.

However, during the testimony[74] of RO Virginia Rafols, she admitted that although they attempted to validate such third-party information through the issuance of Confirmation Letters, there were no responses from the alleged third parties.

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[73] G.R. No. 207938. October 11, 2017.
[74] Transcript of Stenographic Notes (TSN) during the Hearing on March 22, 2022, pp. 12-13, and 17-21.

They merely relied on the fact that since there was no adverse response on said letters, the information was true, to wit:

> "ATTY. PAA:
>
> Q: And the basis of conducting audit upon the petitioner is based on the Third Party Information?
>
> MS. RAFOLS:
>
> A: Yes.
>
> ATTY. PAA:
>
> Q: Particularly Petron products?
>
> MS. RAFOLS:
>
> A: Yes.
>
> ATTY. PAA:
>
> Q: Have you checked with the Petron further regarding this transaction?
>
> MS. RAFOLS:
>
> A: Yes, we sent a letter.
>
> ATTY. PAA:
>
> Q: And did you confirm whether there is actually the petitioner who has the transaction with Petron that time?
>
> MS. RAFOLS:
>
> A: It was indicated (Paused) yes.
>
> ATTY. PAA:
>
> Do you have any proof to that effect?
>
> MS. RAFOLS:
>
> A: Based on the documents in front on me, there is none.
>
> ATTY. PAA:
>
> Q: There is none, Madam Witness.
> That would be all for the witness, your Honors.
>
> xxx xxx xxx

JUSTICE DEL ROSARIO

May I? Just a point of clarification. You mentioned that what you did here is to do a computerized matching. When we say computerized matching, you are saying that you look into certain records of third parties, is that what you mean?

MS. RAFOLS:

Yes, your Honors.

JUSTICE DEL ROSARIO

How many third parties are involved?

xxx xxx xxx

MS. RAFOLS:

More or less ten (10), your Honors.

JUSTICE DEL ROSARIO

I see. Did you actually inform the petitioner here as to the identities of the ten (10) third party sources?

MS. RAFOLS:

Yes, your Honors. They were provided with the details of the amount that is in question.

JUSTICE DEL ROSARIO

Kindly, I'm sorry I did not hear that. You provided the petitioner with the names of the third party sources?

MS. RAFOLS:

Yes, your Honors.

JUSTICE DEL ROSARIO

How did you provide this information to the petitioner, was it by way of a letter or an official communication in writing?

MS. RAFOLS:

Your Honors, we served the letter notice and the detail of the account in question, and then, if my recollection is right, the taxpayer had several meeting with me, so I provided the second copy personally to him.

JUSTICE DEL ROSARIO

So, you are saying that there is a letter notices and in the letter notice, you already enumerated the third party sources, is that it?

MS. RAFOLS:

Yes. your Honors.

JUSTICE DEL ROSARIO

And you actually validated the accuracy and veracity of the information provided by the third party sources by way of, let say, calling them to your office, or providing document under oath to confirm the authenticity of the information?

MS. RAFOLS:

Your Honors, we confirm through letters only. We sent letters to the taxpayers involved. And when they (Interrupted)

JUSTICE DEL ROSARIO

Anyway, do you have copy of the confirmation letter?

MS. RAFOLS:

Yes, your Honors.

xxx xxx xxx

JUSTICE DEL ROSARIO

As a matter of procedure, after sending that, you are supposed to wait for a written response, is that it?

MS. RAFOLS:

Yes. Because we give them. "If this office does not receive any response from you within five (5) days from receipt of this letter, we will consider the above purchase/amounts to be true and correct.

xxx xxx xxx

JUSTICE DEL ROSARIO

Yes. So, in other words, you already assumed the accuracy of the information you gathered to this computerized matching if there is no response from the third party source?

MS. RAFOLS:

Yes, your Honors."

Item II(4) of Revenue Memorandum Order (RMO) No. 46-2004 dated September 2, 2004[75] provides:

> "4. In the event **a taxpayer who has been issued an LN protests the accuracy of the data provided by third party sources** (as opposed to erroneous encoding of return information in the ITS), the RO concerned shall, upon receipt of the Protest Letter of the taxpayer, evaluate the protest and require the latter to execute a Sworn Statement attesting to the alleged inaccuracies or errors in the TPI. **The TPI provider** (except BOC) **shall also be required to execute a Sworn Statement attesting to the data provided**." (*Emphasis supplied*)

Based on the records of the case, after petitioner protested the information in the LN through his Letter dated January 14, 2013, RO Rafols did not secure the required sworn statement from the third party sources but merely relied on the notation in the confirmation letters that failure to respond to such letter shall mean that the information therein will be "assumed to be true and correct."

It is very clear from RO Rafols' testimony that they failed to validate the information provided by such computerized matching. If only they have validated from Petron itself, it will come to their knowledge that petitioner has no more transactions with Petron in the year 2011 as testified[76] by Mr. Adrian Mercado, Special Assistant at Petron's Office of the Chief Finance Officer, to wit:

"JUSTICE VICTORINO

Question, why did you issue this Certification?

MR. MERCADO

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[75] Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

[76] TSN during the Hearing on August 7, 2018, pp. 7-10.

A As requested by the petitioner, we just want to certify that Mr. De Quinto has no more transactions with Petron during the year 2011.

JUSTICE VICTORINO

So petitioner in this case requested Petron to issue a Certification to the effect that?

MR. MERCADO

A That the petitioner had no existing sales with Petron during the year 2011.

xxx xxx xxx

JUSTICE VICTORINO

Upon which did you base this Certification?

MR. MERCADO

A Based on our records, Mr. De Quinto stopped dealing with us since year 2006 or 2007.
xxx xxx xxx

JUSTICE VICTORINO

Why did you issue that Certification in this case?

MR. MERCADO

A Because there was... submitted by the petitioner a letter coming from BIR questioning that the petitioner failed to submit the correct income tax of their company and they want to prove that the dealings with Petron does not exist during that time.

xxx xxx xxx

JUSTICE LIBAN

You are telling us now in your testimony that the statements you made in the Certification are true and correct?

MR. MERCADO

A Yes, your Honor."

Mr. Mercado even admitted in the Certification dated September 4, 2015[77] that it was Petron's fault that the transactions still appear under petitioner's account. It was found out that Petron failed to update their records and instead of using the TIN of the new dealer, Maximus Trading Inc., petitioner's TIN was used on the latter's account. Hence, the transactions picked-up by BIR appeared in petitioner's name.

Further, in Ms. Rafols testimony, after assuming that the purchases were made allegedly by petitioner, they considered such purchases as sales without looking into petitioner's books of accounts, to wit:[78]

> "JUSTICE DEL ROSARIO
>
> All right. So, what you were able to gather by way of information are purchases made by the taxpayer?
>
> MS. RAFOLS:
>
> Yes, your Honors.
>
> JUSTICE DEL ROSARIO
>
> So, you convert the purchases into an assumption that that(sic) income was actually derived?
>
> MS. RAFOLS:
>
> Yes.
>
> JUSTICE DEL ROSARIO
>
> Just to enlighten the Court, how do you come up with that conclusion that a purchase is an income? Just to clarify this point, if you for instance, let say, makes grocery purchases, is it right to conclude at the end of the year that you actually gained income because you made a purchase?
>
> MS. RAFOLS:
>
> Yes, your Honors.
>
> JUSTICE DEL ROSARIO
>
> So, in other words, all taxpayers, the moment they

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[77] *Supra*, Note 34.
[78] TSN during the Hearing on March 22, 2022, pp. 22-23. *om*

> made purchases, let say every day that they make a purchase, let say, go to the grocery and make purchases, those purchases should be reported as an income? Is that the theory here?
>
> MS. RAFOLS:
>
> Yes, your Honors
>
> JUSTICE DEL ROSARIO
>
> And by concluding that these purchases are income, you even do not consider any assumed deduction? Because when we say income for tax purpose, is it not that there are certain deductions that are allowed? But in so far as computer matching is concerned, no deduction is ever assumed?
>
> MS. RAFOLS:
>
> Yes, your Honors."

The testimony of Ms. Rafols reveals that the subject assessment allegedly from third party sources was based purely on mere assumption.

Section 228 of the 1997 NIRC, as amended, provides:

> "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.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings...." (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,[79] the Supreme Court ruled that an assessment should not be based on presumption but on facts, 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 disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*"

Considering that the assessment contained in the LN were not fully validated either from the third party sources or from petitioner's accounting records, such assessments were not based on facts but merely on presumption. Thus, the

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[79] G.R. NO. 136975, March 31, 2005.

assessment was null and void pursuant to Section 228 of the 1997 NIRC, as amended.

WHEREFORE, premises considered, petitioner Julio R. De Quinto's *Verified Petition* filed on June 27, 2017 is hereby **GRANTED**. The PAN dated December 3, 2014, FLD and Assessment Notices for deficiency IT and VAT for calendar year 2011, all dated December 19, 2014, Letter dated March 13, 2017 issued by Regional Director Marina C. De Guzman, and the undated WDL are **CANCELLED** and **SET ASIDE**.

The Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency IT and VAT assessments against petitioner Julio R. De Quinto arising from the PAN dated December 3, 2014, FLD and Assessment Notices, all dated December 19, 2014, Letter dated March 13, 2017 issued by Regional Director Marina C. De Guzman, and the undated WDL. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court, as amended.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice