REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10476

PPI HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND and BIR LARGE TAXPAYERS SERVICES - COLLECTION AND ENFORCEMENT DIVISION,
Respondents.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
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Makati City

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Bureau of Internal Revenue
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GREETINGS:

You are hereby notified by these presents that on **February 27, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 3, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PPI HOLDINGS, INC., *Petitioner,*	**CTA CASE NO. 10476**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE and BIR LARGE TAXPAYER SERVICES – COLLECTION AND ENFORCEMENT DIVISION, *Respondents.*	Promulgated: FEB 27 2025, 1:10 PM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review [With Urgent Motion: A) To Lift Warrant of Distraint and Levy and Warrant of Garnishment; and B) To Suspend the Collection of Taxes]* [1] *(Petition)* filed pursuant to Section 3(a), Rule 8, in relation to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), with a *Supplement to the Petition for Review*[2] filed pursuant to Section 6, Rule 10 of the Rules of Court. Petitioner prays that, after due hearing, judgment be rendered ordering respondents to:

1. **ANNUL, REVERSE, and SET ASIDE** the Warrant of Distraint and/or Levy (WDL), the Warrant of Garnishment (WG), and the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) issued against it for taxable year (TY) 2013; and

[1] Docket – Vol. I, pp. 8–63.
[2] Docket – Vol. II, pp. 608–619.

2. **RETURN and REFUND** to petitioner the amount of ₱25,580,537.87, corresponding to Security Bank and Trust Company (SBTC) Check No. 0000001446.

THE PARTIES

Petitioner **PPI Holdings, Inc.** is a corporation duly organized under Philippine laws, with principal office at 6th Floor, Cyberpark Tower 1, Araneta Center, Quezon City. It is primarily engaged in the business of establishing, operating, and maintaining food outlets, restaurants, bakeries, coffee shops, and refreshment parlors.[3]

Respondent **Commissioner of Internal Revenue** (CIR), with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City. He may be served with summons, pleadings, and other court orders and processes at the Litigation Division, Room 703, BIR National Office Bldg., BIR Road, Diliman, Quezon City.[4]

Co-respondent **Large Taxpayer Services – Collection and Enforcement** (LT-Office) of the BIR is the government agency falling under the control and supervision of the CIR, which is involved in collecting all internal revenue taxes and other matters, including the distraint, levy, and garnishment over a taxpayer's properties and is the Office where petitioner is registered. The LT-Office may be served with orders and legal processes at Room 307, 3rd Floor, BIR National Office Building, Diliman, Quezon City.[5]

FACTUAL ANTECEDENTS

On September 7, 2015, petitioner received from respondent a Letter of Authority (LOA) No. eLA201200042088, dated September 2, 2015,[6] authorizing Revenue Officer (RO) Matias Fadri III (RO Fadri) and Group Supervisor (GS) Marilyn San Diego (GS San Diego) of Revenue District Office No. 125 – Regular LT Division to examine its books of accounts and other accounting records for all internal revenue taxes covering the period January 1, 2013 to December 31, 2013.

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3 Docket – Vol. I, p. 9, Petition for Review, par. 2.1.
4 Docket – Vol. II, p. 794, Joint Stipulation of Facts and Issues (JSFI), par. 1.1.1.
5 *Id.* at 794–795, JSFI, par. 1.1.2.
6 Docket – Vol. I, p. 476, Exhibit P-82.

Petitioner executed a series of *Waivers of the Defense of Prescription* (*Waivers*),[7] extending the period to assess until December 31, 2017.

On November 22, 2017, respondent issued a Preliminary Assessment Notice (PAN), [8] with an attached Details of Discrepancies, which petitioner received on November 27, 2017.

On December 12, 2017, petitioner filed its *Reply*[9] to the PAN.

Subsequently, another series of *Waivers*[10] of the defense of prescription was executed, further extending the period to assess until March 31, 2019.

On March 27, 2019, petitioner received the FLD/FAN.[11] In response, it filed a *Protest*[12] on April 24, 2019, in the form of a request for reconsideration.

On February 2, 2021, petitioner allegedly received a WDL ordering the distraint and levy of its properties to satisfy the assessed deficiency taxes amounting to ₱25,580,537.87. On February 17, 2021, petitioner was informed that a WG for the same amount had been served on its corporate bank account with SBTC.

On March 4, 2021, petitioner filed the instant *Petition* seeking to annul, reverse and set aside the WDL, WG, and the FLD/FAN issued against it for TY 2013.

On March 8, 2021, the Court issued a *Summons,* [13] directing respondents to file their *Answer* within thirty (30) days from notice. In a Resolution [14] dated March 12, 2021, respondents were likewise directed to file their comment/opposition to the *Urgent Motion: A) To lift Warrant of Distraint and Levy and Warrant of Garnishment; and B) To Suspend the Collection of Taxes*, within five days from notice.

[7] Exhibits P-61 to P-64; Exhibits R-4 to R-8.
[8] Exhibits R-11 and R-10, BIR Records, pp. 566–585.
[9] BIR Records, pp. 659–670.
[10] Exhibits P-65 to P-67; Exhibits R-12 to R-14.
[11] Docket – Vol. I, pp. 443–446, Exhibit P-68.
[12] *Id.* at 465–474, Exhibit P-79.
[13] Docket – Vol. II, p.534.
[14] Docket – Vol. I, p. 533.

On May 18, 2021, petitioner filed an *Urgent Motion to Set Case for Hearing on 26 April 2021 (Re: Urgent Motion to: A) Lift Warrant of Distraint and Levy and Warrant of Garnishment; and B) To Suspend the Collection of Taxes.*[15]

On the same day, the Court also received petitioner's *Supplemental Motion (Re: Urgent Motion to: A) Lift Warrant of Distraint and Levy and Warrant of Garnishment; and B) To Suspend the Collection of Taxes),*[16] to which respondents were directed to file their comment or opposition within five days from notice. [17]

On June 2, 2021, respondents filed their *Answer with Opposition.*[18]

On July 27, 2021, petitioner filed a *Motion for Leave to Serve and File the Attached Supplement to the Petition for Review (Motion for Leave).*[19]

At the July 28, 2021, hearing, petitioner's counsel manifested that the *Urgent Motion* and *Supplemental Motion* had become moot since respondents had already garnished petitioner's SBTC account. Given this, the Court granted respondents until August 7, 2021, to file their comment on petitioner's *Motion for Leave.*[20]

On October 26, 2021, respondents filed their *Comment/Opposition (on petitioner's Motion for Leave to Serve and File the Attached Supplement to the Petition for Review).*[21] On the same day, respondents filed their *Amended Answer Ad Cautelam.*[22]

On November 2, 2021, respondents filed a *Manifestation with Submission,*[23] alleging that they inadvertently failed to attach the annexes to their *Amended Answer Ad Cautelam* due to the volume of pleadings filed on that day and requesting their inclusion in the records. The Court granted this request in a

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15 Docket – Vol. II, pp. 548–552.
16 *Id.* at 535–542.
17 *Id.* at 556–557.
18 *Id.* at 558–572.
19 *Id.* at 597–602.
20 *Id.* at 666, Minutes of Hearing.
21 *Id.* at 674–679.
22 *Id.* at 681–701.
23 *Id.* at 703–706.

Resolution dated February 7, 2022,[24] and submitted petitioner's *Motion for Leave* for resolution.

On March 30, 2022, the Court resolved to grant petitioner's *Motion for Leave* and admit its *Supplement to the Petition for Review,* while respondents were ordered to plead thereto within ten (10) days from notice.[25]

Having failed to file their *Answer* to petitioner's *Supplement to the Petition for Review,* the pre-trial conference was set and conducted on August 3, 2022.[26]

On November 23, 2022, the Court issued the *Pre-Trial Order.*[27]

The trial then proceeded.

During the trial, petitioner's lone witness, Ms. Eva C. Dehan, testified via Judicial Affidavits executed on March 2, 2021[28] and July 27, 2021.[29] With no other witnesses to present, petitioner filed its *Formal Offer of Documentary Evidence*[30] on May 22, 2023, which the Court partly admitted on July 28, 2023.[31]

Respondents presented ROs Matias D. Fadri III[32] and Regie B. Tallod,[33] who testified via their respective Judicial Affidavits.

On October 13, 2023, with no further witnesses, respondents filed their *Formal Offer of Evidence,*[34] which the Court all admitted in the Resolution[35] dated January 19, 2024.

On March 5, 2024, the instant case was submitted for decision considering petitioner's *Memorandum*[36] filed on

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24 *Id.* at 711–713.
25 *Id.* at 715–722, Resolution dated March 30, 2022.
26 *Id.* at 725–726, Resolution dated June 8, 2022.
27 *Id.* at 851–861.
28 Docket – Vol. – I, pp. 246–280, Exhibit P-96.
29 Docket – Vol. – II, pp. 628–636, Exhibit P-97.
30 *Id.* at 873–910.
31 *Id.* at 973–975.
32 *Id.* at 583–594, Exhibit R-30.
33 *Id.* at 575–582, Exhibit R-31.
34 *Id.* at 977–979, Order dated September 26, 2023; 988–997, Formal Offer of Evidence.
35 *Id.* at 1014–1016.
36 *Id.* at 1017–1061.

February 22, 2024, and respondents' *Memorandum*[37] filed on February 23, 2024.

Hence, this Decision.

THE ISSUES

As stipulated[38] by the parties, the following are the issues to be resolved:

1. Whether petitioner is liable for the assessed deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, withholding VAT and other percentage tax, documentary stamp tax, registration fee and compromise penalties for taxable year 2013 in the aggregate amount of Twenty-Five Million Five Hundred Eighty Thousand and Five Hundred Thirty-Seven Pesos and Eighty-Seven Centavos (Php25,580,537.87); and

2. Whether petitioner is entitled to a refund or tax credit in the amount of Twenty-Five Million Five Hundred Eighty Thousand and Five Hundred Thirty-Seven Pesos and Eighty-Seven Centavos (Php25,580,537.87) representing alleged illegally or erroneously collected income tax, value-added tax, withholding tax on compensation, expanded withholding tax, withholding VAT and other percentage tax, documentary stamp tax, registration fee and compromise penalties for taxable year 2013.

Petitioner's arguments:

At the outset, petitioner submits that it is not liable for the assessed deficiency taxes for the following reasons:

First, the assessment is void since GS Ma. Daisy C. Dajao (GS Dajao) is not authorized to conduct the audit.

Citing Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner argues that an LOA is required before an RO may be authorized to perform assessment functions. Petitioner further cites *Commissioner of Internal Revenue v. Manila Medical Services, Inc.* [39] and *Commissioner of Internal Revenue v. McDonald's Philippines*

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[37] *Id.* at 1065–1090.
[38] *Id.* at 795–796, JSFI, Stipulation of the Issues.
[39] G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

Realty Corp.,[40] where the Supreme Court ruled that an assessment is void if no separate or amended LOA is issued for the new revenue officer/s.

In the instant case, petitioner avers that only RO Fadri and GS San Diego were authorized to examine its books of accounts and other accounting records for all internal revenue taxes for TY 2013 pursuant to LOA No. eLA201200042088, dated September 2, 2015. However, BIR Records reveal that GS Dajao conducted the audit and proposed the findings per FLD/FAN pursuant to (a) Memorandum with attached Revenue Officer's Audit Report dated March 5, 2019,[41] and (b) Report of RO Fadri and GS Dajao forwarding the docket for the approval of the report and issuance of FLD.[42]

Petitioner asserts that GS Dajao was not authorized to continue the audit or investigation under a new and/or amended LOA. Hence, the assessment is void due to the absence of authority of GS Dajao.

Second, respondent has no right to collect on a prescribed assessment.

Petitioner claims that the period to assess or collect the internal revenue taxes was never extended, and the assessments had already been barred by prescription. Citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[43] petitioner submits that a defective waiver cannot extend the prescriptive period. Allegedly, in *Commissioner of Internal Revenue v. Standard Chartered Bank*,[44] the Supreme Court ruled that since the waiver was signed by the Assistant Commissioner – Large Taxpayers Service and not by the CIR, the same was defective or invalid.

Here, petitioner avers that none of the *Waivers* were signed by the CIR, but only by the Assistant Commissioner - Large Taxpayers Service, OIC Assistant Commissioner - Large Taxpayers Service, or Group Supervisor of Regular LT Audit Division II. For petitioner, the invalidity of the *Waivers* resulted in the non-extension of the three-year prescriptive period to assess. Hence, when it received the FLD/FAN on March 27,

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[40] G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].
[41] Exhibit R-15, BIR Records, pp. 869–894.
[42] BIR Records, pp. 910–911.
[43] G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division].
[44] G.R. No. 192173, July 29, 2015 [Per J. Perez, First Division].

2019, the BIR's right to assess it for TY 2013 had already prescribed.

Third, the assessment has no legal and factual basis.

According to petitioner, an assessment must be based on actual facts. Assessments without factual basis are arbitrary, capricious, and illegal. Where the CIR has come out with a "naked assessment," *i.e.*, without any foundation of character, the determination of the tax due is without a rational basis. Allegedly, in the instant case, the CIR's assessments against petitioner were based merely on petitioner's tax returns, audited financial statements, other aggregate reports, internal records and presumptions. The assessments allegedly failed to consider petitioner's reconciling entries and explanations, as well as the nature of petitioner's business.

Hence, for petitioner, the assessments issued against it were naked assessments based on a mere table audit.

Finally, petitioner submits that it is entitled to a refund of ₱25,580,537.87, which was collected without due process and pursuant to a void assessment.

Petitioner emphasizes that on April 14, 2021, the BIR issued Revenue Memorandum Circular No. 52-2021, [45] suspending the statute of limitations for assessing and collecting taxes during the Enhanced Community Quarantine (ECQ) period and for 60 days thereafter. However, despite this issuance, the BIR still proceeded to garnish its corporate bank accounts when courts were physically closed, and the NCR was under *Modified Enhanced Community Quarantine* (MECQ), which is a clear disregard of its basic rights to fair play and due process, warranting the refund of the amount collected from it.

Moreover, respondents' resort to garnishment was premature and without legal basis, as the alleged deficiency taxes had not yet become delinquent. Citing the case of *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,*[46] petitioner submits that the tax subject of the present assessments never became delinquent because it had

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[45] SUBJECT: Suspension of the Running of the Statute of Limitations on Assessment and Collection of Taxes Pursuant to Section 223 of the National Internal Revenue Code of 1997, as Amended, Due to the Declaration of Enhanced Community Quarantine in Metro Manila, Bulacan, Cavite, Laguna, and Rizal (NCR Plus), and Other Applicable Jurisdictions.

[46] CTA EB Case No. 2038 (CTA Case No. 8952), March 16, 2021.

timely appealed the WDL (treated as the CIR's final decision). Hence, for petitioner, there was no basis for respondents to institute the collection through garnishment.

Respondents' counter-arguments:

While respondents maintain that the Court has no jurisdiction over the original *Petition* as the subject assessment has attained finality given petitioner's withdrawal of its protest, respondents also assert that the *Supplement to the Petition for Review* - which completely changed the cause of action from one challenging the validity of the assessment to a claim for refund - should only be allowed upon a showing that it is required to attain substantial justice.

For respondents, taking cognizance of this refund claim will not serve the substantial interests of justice. Instead, it would deprive the BIR of its primary jurisdiction to resolve cases involving refunds. Respondents emphasize that the NIRC of 1997, as amended, has a provision for claiming a refund for allegedly erroneously or illegally collected taxes. Should petitioner wish to claim that the collection of the deficiency taxes was erroneous due to the invalidity of the assessment, it should first file a claim with the BIR instead of directly filing it with the Court by simply "supplementing" its original *Petition*. After all, the BIR should be given an opportunity to determine whether petitioner is entitled to a refund, pursuant to Section 229 of the NIRC of 1997, as amended.

Hence, respondents assert that no amount of supplementing the original petition can remedy the fact that petitioner has not filed a claim for a refund with the BIR, thus depriving the Court of jurisdiction over the case.

In the same vein, respondents contend that petitioner failed to state a cause of action. According to respondents, one may only have a right to claim a refund when there has been an illegally or erroneously collected tax.

Allegedly, there was no illegally or erroneously collected tax in the instant case. They explain that assessments by the BIR are considered *prima facie* correct. In the absence of any finding that an assessment is invalid, the collection made by the BIR is therefore valid and cannot be the subject of a refund claim, especially since petitioner has not gone through the proper steps to claim a refund before the BIR as mandated by law.

Hence, there being no legal right to a refund or a correlative obligation on the part of respondents to refund the amount sought, petitioner has no cause of action in its *Petition* that is essentially a refund claim.

Anent petitioner's assertion that respondents "*surreptitiously took advantage*" of the MECQ and the physical closure of courts by not filing their comment/opposition to petitioner's *First Urgent Motion* and that they proceeded to "prematurely garnish PPI's corporate bank account with SBTC," respondents disagree.

Respondents clarify that the Supreme Court has issued circulars suspending the period for filing pleadings; hence, there was no deliberate intent on their part not to file their pleadings. Further, the collection of taxes was a valid act done by the BIR's Collection Division, pursuant to Section 218[47] of the NIRC of 1997, as amended. Hence, the mere filing of a motion for the issuance of a Temporary Restraining Order does not operate to automatically paralyze the BIR's collection efforts. For respondents, it is not the filing of the motion but the promulgation of the Court's Order, coupled with the payment of a bond, that restrains the BIR's collection efforts.

Regarding petitioner's assertion that the period for assessment had prescribed, respondents believe otherwise.

According to respondents, petitioner failed to disclose that there were several *Waivers* executed by the parties, which, if taken together, extended the period for assessment until March 31, 2019. Respondents add that under Revenue Memorandum Order (RMO) No. 14-2016,[48] it is the duty of the taxpayer to ensure that the waiver is validly executed, and the same becomes effective once the taxpayer executes it.

Allegedly, there is no question that the execution of the *Waivers* proved to be beneficial to petitioner considering that the aforesaid *Waivers* served as tools for petitioner to have

[47] 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.

[48] SUBJECT: Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended.

enough time to gather and submit its voluminous documents/records for BIR's audit.

Having taken advantage of these *Waivers*, petitioner cannot now repudiate the same. Hence, petitioner's claim that the period to assess had prescribed should fail.

In closing, respondents assert that the deficiency tax assessments against petitioner are correct.

THE COURT'S RULING

Before delving into the merits of the case, the Court must first determine whether it has jurisdiction over this *Petition for Review*.

The Court has jurisdiction over the instant Petition for Review.

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, it may only take cognizance of matters clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125,[49] as amended by RA No. 9282[50] reads:

> 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 Code or other laws administered by the Bureau of Internal Revenue; ... (*Emphasis supplied*)

[49] An Act Creating the Court of Tax Appeals.
[50] 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 of Republic Act No. 1125, as Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And For Other Purposes.

Furthermore, under Section 11[51] of RA No. 1125, as amended, in relation to Section 3 (a),[52] Rule 8 of the RRCTA, a party adversely affected by a decision, ruling, or inaction of the CIR may appeal to the CTA by filing a petition for review within 30 days from receipt of such decision or ruling, or within 30 days after the expiration of the specific period of action.

Based on the foregoing, the Court has exclusive appellate jurisdiction over cases involving disputed tax assessments, and a taxpayer or party adversely affected by the CIR's decision may file an appeal with the Court within 30 days from receipt of such decision.

In the instant case, petitioner filed the *Petition for Review* to appeal the deficiency tax assessments issued against it for TY 2013, after receiving the WDL dated February 1, 2021, on February 2, 2021.

In *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[53] (*SEGI*), the Supreme Court categorically declared:

> ...[I]n instances when the Commissioner, **without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, <u>proceeds with distraint and levy or institutes an action for collection in the ordinary courts</u>, this Court has considered this as an implied denial**. The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it was notified of the warrant or collection suit. (*Emphasis and underscoring supplied*)

Similarly, in the present case, petitioner received the FLD/FAN on March 27, 2019, which it protested through a request for reconsideration on April 24, 2019. However, without issuing a categorical decision on petitioner's protest,

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[51] Section 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 x x x 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 actions as referred to in Section 7 (a) (2) herein. x x x

[52] Section 3. *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.

[53] G.R. No. 225809, March 17, 2021 [Per J. Leonen, Third Division].

respondent proceeded with the collection of the assessed deficiency taxes by issuing the WDL on February 1, 2021, which petitioner received on February 2, 2021.

Considering the foregoing and following the dictum enunciated in *SEGI*, the issuance of the subject WDL constitutes the CIR's final decision, which is appealable before this Court. Hence, counting 30 days from February 2, 2021, petitioner had until March 4, 2021, to file its appeal before this Court.

Since petitioner filed the *Petition for Review* on March 4, 2021, the appeal was timely filed.

Respondent contends that the Court has no jurisdiction to take cognizance of the *Petition for Review*, arguing that the original *Petition* sought to invalidate the assessment issued against it, whereas petitioner's *Supplement to the Petition for Review* completely changes its original cause of action, *i.e.*, converting the case into a claim for refund of an allegedly erroneous or illegally collected tax.

Respondent asserts that petitioner should have first filed an administrative claim for refund with the BIR instead of directly filing it with the Court by simply "supplementing" its original *Petition*. Citing Section 229 of the NIRC of 1997, as amended, respondent maintains that the BIR must be given an opportunity to determine whether petitioner is entitled to a refund. Since petitioner did not file an administrative claim, respondent argues that the Court lacks jurisdiction over the case.

Respondents' contention is unpersuasive.

As aptly ruled by the Court when it allowed petitioner's *Supplemental Petition*:

> Since petitioner seeks to recover the garnished amount pertaining to the deficiency taxes subject of the assailed FAN/FLD, the Court shall apply by analogy the ruling in the case of *Dr. Feliza L. Vda. De San Agustin et al. v. Commissioner of Internal Revenue*, wherein the Supreme Court followed the dictum in the case of *Roman Catholic Archbishop of Cebu v. The Collector of Internal Revenue*, to wit:

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'The case has a striking resemblance to the controversy in Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue.

The petitioner in that case paid under protest the sum of ₱5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that petitioner had failed to first file a written claim for refund, pursuant to Section 306 of the Tax Code, of the amounts paid. **Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for lack of jurisdiction**. On appeal to this Court, the tax court's ruling was reversed; the Court held:

'We agree with petitioner that Section 7 of Republic Act No.1125, creating the Court of Tax Appeals, in providing for appeals from —

> '(1) Decisions of the Collector 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 or part of the law administered by the Bureau of Internal Revenue —

allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, x x x'; that the **present action involves a disputed assessment'; because from the time petitioner received assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court a quo, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. To hold that the taxpayer**

> **has now lost the right to appeal from the ruling on, the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment**. The law, should not be interpreted as to result in absurdities.'
>
> The Court sees no cogent reason to abandon the above dictum and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it.'

> Based on the foregoing and contrary to respondents' contention, it will be futile to require petitioner to file an administrative claim for refund of ₱25,580,537.87, representing the amount garnished on 22 April 2021, because, pending the determination of the propriety of the assessment and the amount of tax due in this case, respondents, expectedly, would deny the said claim for refund.[54]

The Court emphasized that requiring petitioner to file an administrative claim for refund would be a useless formality, as the BIR had already denied petitioner's *Protest* by issuing the WDL. Further, citing *Commissioner of Internal Revenue v. Court of Appeals, City Trust Banking Corporation and Court of Tax Appeals*,[55] the Court underscored that resolving the deficiency tax assessment jointly with the refund claim is both legally appropriate and logically necessary to avoid multiplicity of suits.

Respondents also claim that the Court has no jurisdiction over the case as the subject assessment has attained finality due to petitioner's withdrawal of its protest to the FLD/FAN.

The Court is not convinced.

[54] Docket – Vol. II, pp. 719–721, Resolution dated March 30, 2022.
[55] G.R. No. 106611, July 21, 1994 [Per J. Regalado, Second Division].

Records reveal that petitioner's withdrawal letter[56] was filed on the condition that its application for tax amnesty on delinquencies, pursuant to RA No. 11213, otherwise known as the "Tax Amnesty Act,"[57] would be processed, and a Certificate of Tax Delinquencies/Tax Liabilities (CTD) would be issued. However, as pointed out by petitioner, the condition was not met since its application for tax amnesty on delinquencies was denied.[58]

Consequently, the conditional withdrawal letter is deemed not submitted.

Given the foregoing and the timely filing of the *Petition for Review*, the Court holds that it has jurisdiction over the instant case.

Now, on the merits.

The GS who continued petitioner's audit lacked a valid LOA, rendering the resulting deficiency tax assessments void ab initio.

At the core of petitioner's challenge to the validity of the deficiency tax assessments is the absence of authority of GS Dajao to continue the audit and investigation of its books of accounts and other accounting records for TY 2013. Petitioner contends that GS Dajao was not authorized under a new or amended LOA to continue with the audit investigation. Moreover, no Memorandum of Assignment, Referral Memorandum, or any equivalent document directed GS Dajao to continue the audit investigation.

The Court finds merit in petitioner's argument.

Section 6 of the NIRC of 1997, as amended, explicitly requires a specific authority from the CIR or his duly authorized representative before a taxpayer may be subjected to an examination, to wit:

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56 Docket – Vol. II, pp. 643–645, Exhibit P-94.
57 An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2017 and Prior Years with Respect to Estate Tax, Other Internal Revenue Taxes, and Tax on Delinquencies.
58 Docket – Vol. II, p. 657, Exhibit P-95.

> SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
>
> (A) *Examination of Return and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. (*Emphasis supplied*)

An RO of the BIR cannot subject a taxpayer to an audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, states:

> SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a <u>Letter of Authority</u> issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or **to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis and underscoring supplied*)

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.* [59] the Supreme Court underscored that an LOA is indispensable for the validity of an assessment, to wit:

> Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> . . . .
>
> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so

[59] G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

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> authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (*Boldfacing and underscoring supplied*)

Also, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[60] the Supreme Court reiterated this principle, to wit:

> Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. (*Emphasis supplied*)

Moreover, RMO No. 43-90 [61] expressly requires the issuance of a new LOA when a revenue officer assigned under a previous LOA is replaced or reassigned, *viz.*:

> C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> ... ...
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**. (*Emphasis supplied*)

Relevantly, in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[62] (*McDonald's case*) the Supreme Court highlighted the importance of the issuance of a new or amended LOA in case of transfer or reassignment of ROs, to wit:

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[60] G.R. No. 222743, April 5, 2017 [Per J. Reyes, Third Division].
[61] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.
[62] G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

> ***I. The Reassignment or Transfer of a Revenue Officer <u>Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or investigation</u>***
>
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of a LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.
>
> . . . .
>
> Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.
>
> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. . . . **There must be a grant of authority, in the form of a LOA, before *<u>any</u>* revenue officer can conduct an examination or assessment**. . . . **In the absence of such an authority, the assessment or examination is a nullity**. (*Emphasis supplied; Citations omitted*)

Clearly, all ROs must be armed with an LOA issued by the CIR or an authorized representative to conduct an audit or examination of a taxpayer. Without an LOA, only the CIR or a duly authorized representative can conduct the audit or examination.

Moreso, the Supreme Court emphasized in *McDonald's* that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation **without a separate or amended LOA** (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (iii)

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fails to comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

In the instant case, records reveal that the LOA issued on September 2, 2015, authorizes RO Fadri and GS San Diego to examine petitioner's books of accounts and other accounting records for TY 2013. RO Fadri confirmed this in his testimony, thus:

> 7. Q: How was petitioner informed that the audit/investigation was authorized?
>
> A: There was a Letter of Authority (LOA) No. eLA201200042088 dated 2 September 2015, that was issued. **The LOA named me and my then group supervisor, Marilyn San Diego, as the revenue officers authorized to conduct an investigation on the case**. In addition, a letter dated 30 September 2015 was also sent to the taxpayer informing them that an investigation will be conducted. The said letter detailed the documents required to be submitted for the investigation.[63] (*Boldfacing supplied*)

However, the *Memorandum,*[64] along with the attached Revenue Officer's Audit Report dated March 5, 2019, which **recommended the approval of the audit report and the <u>issuance of the FLD</u>**, bore the signatures of RO Fadri and GS Dajao. This clearly indicates that RO Fadri and GS Dajao were the ones who conducted the audit and investigation of petitioner's books of accounts and other accounting records.

Notably, while RO Fadri was duly authorized with an LOA to audit and examine petitioner, GS Dajao was not granted such authority. The records lack any document authorizing GS Dajao to continue the audit.

Revenue Administrative Order No. 02-90[65] explicitly states:

> In the Revenue District Offices, Sector Operations Service and other audit units, all Revenue Officers I who are appointed to positions below the aforementioned supervisory positions shall be regrouped in such a way that they should be assigned under one Revenue Officer II or Revenue Officer III or Revenue Officer IV **who will function as Group Supervisor** or Section Chief.

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[63] Docket – Vol. II, p. 584, Exhibit R-30, RO Fadri's *Judicial Affidavit* dated May 17, 2021.
[64] Exhibit R-15, BIR Records, pp. 869–894.
[65] SUBJECT: Assignment of All Revenue Officers Holding Supervisory Positions to Perform Actual Supervisory Functions, March 28, 1990.

> It does not matter whether a group supervisor or section chief in the audit unit will have only one Revenue Officer I under him. Under this set up, it is expected that the work of Revenue Officers I will be closely supervised and reviewed by their group supervisors or section chiefs.
>
> All group supervisors and section chiefs shall henceforth be responsible for the work performance of their subordinates and it shall be their responsibility to closely supervise and review their work and audit reports.

Given this, a GS, who also functions as an RO, is not only responsible for overseeing an audit but also plays an active role in conducting assessments. Accordingly, a GS must also be armed with a valid LOA to lawfully perform such functions. Every LOA issued by the BIR designates a specific GS to a particular case, reinforcing the need for proper authorization. Thus, any assessment conducted by a GS without an LOA is void.

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[66] the Supreme Court reiterated that an LOA is statutorily required to clothe ROs with authority, and _only_ those named in the LOA are authorized to examine a taxpayer, to wit:

> . . . Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that ***only*** the revenue officers **actually named** under the LOA are authorized to examine the taxpayer. This is likewise evident under the express provision of Revenue Memorandum Order No. 43-90 . . . **In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.** (*Emphasis supplied*)

Indeed, jurisprudence dictates that there must be a grant of authority in the form of an LOA before any revenue officer can conduct an examination or assessment.[67] Moreover, only the revenue officers actually named under the LOA are authorized to examine the taxpayer.[68]

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[66] G.R. Nos. 249883-84, January 27, 2020 [Per Resolution, Second Division].

[67] *Commissioner of Internal Revenue v. McDonalds Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division] citing *Commissioner of Internal Revenue v. Sony Phils, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

[68] *Supra* note 66.

In this case, it is indisputable that GS Dajao was not clothed with the requisite LOA to audit and investigate petitioner's books of account and other accounting records for TY 2013. The absence of a new or separate LOA specifically identifying GS Dajao as the new GS authorized to continue the audit rendered her actions unauthorized. Consequently, her participation in the audit and recommendation for the issuance of deficiency tax assessments lacked legal authority. As a result, the deficiency tax assessments arising from such an audit are null and void.

Having arrived at the foregoing conclusion, the Court finds it unnecessary to discuss and rule upon the remaining issues raised in the instant *Petition.*

Anent petitioner's claim for a **refund**, the same is warranted, as a void assessment bears no valid fruit[69] and does not create any lawful tax liability.

WHEREFORE, premises considered, the *Petition for Review* with the *Supplement to the Petition for Review,* filed by petitioner PPI Holdings, Inc. on March 4, 2021, and July 27, 2021, respectively, is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand with Final Assessment Notices dated March 19, 2019, Warrant of Distraint and/or Levy No. 121-2021-022 dated February 01, 2021, and Warrant of Garnishment No. 121-2021-022-01 dated February 16, 2021, are hereby **CANCELLED** and **SET ASIDE**.

Respondents Commissioner of Internal Revenue and the BIR Large Taxpayer Service – Collection and Enforcement Division are **ORDERED to REFUND** in favor of petitioner the amount of ₱25,580,537.87, representing the garnished amount based on a void assessment.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[69] *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006.

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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

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